TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 622

THOMAS W. HOLLAND, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

vs.

A. H. BELO CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 16, 1941
CERTIORARI GRANTED OCTOBER 27, 1941

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CAPTION

BE IT REMEMBERED, that at a regular term of the United States District Court in and for the Northern District of Texas, begun and holden at Dallas, Texas, on the 13th day of January, A. D. 1941, and which said term adjourned on the 22nd day of March, A. D. 1941, the Honorable Wm. H. Atwell, United States District Judge for the Northern District of Texas, presiding, the following proceedings were had and the following cause came on for trial and was tried, to-wit:

Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, Plaintiff, vs. A. H. Belo Corporation, Defendant.	CIVIL ACTION No. 308

COMPLAINT

Filed August 12, 1940

1.

Plaintiff brings this action to enjoin defendant from violating the provisions of Section 15(a)(1) and 15(a)(2), of the Fair Labor Standard Act of 1938 (Act of June 25, 1938), c. 676, 52 Stat. 1060; U.S.C., Title 29, Sec. 201 *et seq.*), hereinafter called the Act.

II.

Jurisdiction of this action is conferred upon the Court by Section 17 of the Act.

III.

Defendant is, and at all times hereinafter mentioned was, a corporation organized under and existing by virtue of the laws of the State of Texas, having its principal office and place of business in the City and County of Dallas, Texas, within the jurisdiction of this Court, and is, and at all times hereinafter mentioned was, engaged at its said place of business in Dallas in the receipt, handling, distribution, and transmission of news, intelligence, and communications in interstate commerce, in the operation in interstate commerce of a radio broadcasting station known as WFAA, and in the production, publication, sale, and distribution of certain newspapers and other periodicals. The newspapers and other periodicals produced, published, sold and distributed by the defendant, as aforesaid, consist of The Dallas Morning News, a daily newspaper, of which more than 100,000 copies are sold daily, The Semi-Weekly Farm News, of which more than 100,000 copies of each issue are also sold, and the Texas Almanac and Industrial Guide.

At all times hereinafter mentioned defendant has employed and is employing approximately 600 employees in and about its said place of business in Dallas, Texas, in the receipt, handling, distribution, and transmission, of news, intelligence and communications in interstate commerce, in the operation in interstate commerce of said radio station, and in the production and publication of newspapers and other periodicals all as aforesaid, and in processes and occupations necessary thereto. The goods produced in the said place of business are made of materials, substantial quantities of which are purchased and transported in interstate commerce from and through states other than the State of Texas to the said place of business in the State of Texas, and an unsegregated part of the goods produced by the said employees in the said place of business have been and are being produced for interstate commerce and have been and are being sold, transported, shipped and delivered in interstate commerce

from the said place of business in the State of Texas to, into, and through states other than the State of Texas.

IV.

During the period beginning October 24, 1938, the effective date of Section 7(a)(1) of the Act, and continuously through October 23, 1939, defendant employed certain of its aforesaid employees, who were engaged in interstate commerce and in the production of goods for interstate commerce, all as aforesaid, for workweeks longer than forty-four (44) hours, and did fail and refuse to compensate the said employees for their employment in excess of forty-four (44) hours in such workweeks at rates not less than one and one-half times the regular rates at which they were employed; and, during the period beginning October 24, 1939, the effective date of Section 7(a)(2) of the Act, and continuously to the date hereof, defendant has employed certain of the aforesaid employees, who were engaged in interstate commerce and in the production of goods for interstate commerce, all as aforesaid, for workweeks longer than forty-two (42) hours, and has failed and refused to compensate the said employees for their employment in excess of forty-two (42) hours in such workweeks at rates not less than one and one-half times the regular rates at which they were employed. By employing the said employees for workweeks in excess of the said hours during the said periods without compensating them for their employment in excess of the said hours in such workweeks at rates not less than one and one-half times the regular rates at which they were employed, defendant has violated the provisions of Sections 7 and 15(a)(2) of the Act.

V.

During the period beginning on or about October 24, 1938, and continuously to the date hereof, defendant has sold, shipped, delivered, transported, and offered for transportation in interstate commerce from its said place of business in Dallas, Texas, to, into, and through states

other than the State of Texas, goods produced in its said place of business in the production of which many of its employees were employed in violation of Section 7 of the Act, as alleged in paragraph V hereof. By selling, shipping, delivering, transporting, and offering for transportation in interstate commerce, as aforesaid, the said goods so produced, defendant has violated and is violating the provisions of Section 15(a)(1) of the Act.

VI

Defendant has, since the effective date thereof, continuously violated the aforesaid provisions of the Act and threatens and intends to continue to violate the said provisions unless enjoined and restrained by a judgment of this Court.

VII.

A judgment enjoining and restraining the violations hereinabove alleged is specifically authorized by Section 17 of the Act.

WHEREFORE, plaintiff demands judgment enjoining and restraining defendant, its officers, agents, servants, employees and attorneys, and all persons acting or claiming to act in its behalf and interest, from violating the provisions of Section 15(a)(1) and 15(a)(2) of the Act, both permanently and during the pendency of this action, and such other and further relief as may be necessary and appropriate.

Gerard D. Reilly,
Solicitor.

Post Office Address:

c/o Wage and Hour Division
U.S. Department of Labor
620 Wilson Building
1621 Main Street
Dallas, Texas

or

c/o Wage and Hour Division

Irving J. Levy
Assistant Solicitor in
Charge of Litigation

Llewellyn B. Duke,
Regional Attorney

George B. Searls,
Attorney

U.S. Department of Labor
Washington, D. C.

Robert W. Richard,
Asst. Atty.
Wage and Hour Division
United States Department
of Labor
Attorney for Plaintiff.

No. 308

DISTRICT COURT OF THE UNITED STATES

Northern District of Texas

Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor

v.

A. H. Belo Corporation

SUMMONS IN CIVIL ACTION

Returnable not later than 20 days after service.

Llewellyn B. Duke
Wage and Hour Division
Wilson Building,
Dallas, Texas
Attorney for Plaintiff.

Filed 15 day of Aug
1940 at 11:15 o'clock A. M.
Geo. W. Parker, Clerk
By - Ramelle Paul, Deputy

RETURN OF SERVICE OF WRIT

I hereby certify and return, that on the 12th day of August 1940, I received the within summons at Dallas, Texas and executed same at Dallas, Texas August 12th, 1940, by delivering to A. H. Belo Corporation by deliv-

ering a copy of the within Summons and a copy of the Complaint to E. M. Dealey President of said Corporation at his office in the News Building in person at 4:45 P. M.

Marshal's Fees, Service 2.00.

J. R. Wright
United States Marshal.

By Rufus H. Pevehouse
Deputy United States Marshal.

Summons in a Civil Action

DISTRICT COURT OF THE UNITED STATES

For the Northern District of Texas
Dallas Division

Civil Action File No. 308

Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor
Plaintiff,

v.

A. H. Belo Corporation
Defendant.

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon Llewellyn B. Duke, plaintiff's attorney, whose address is 620 Wilson Building, Dallas, Texas, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by

default will be taken against you for the relief demanded in the complaint.

Geo. W. Parker
Clerk of Court.
Ramelle Paul
Deputy Clerk.
Seal of Court.

(SEAL)

Date: August 12, 1940

Note: This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

Filed August 29, 1940.

ANSWER OF DEFENDANT
A. H. Belo Corporation

Now comes A. H. Belo Corporation, defendant herein, and in answer to plaintiff's complaint respectfully shows to the court as follows:

I.

Defendant admits the allegations of paragraph II of said complaint to the effect that this court has jurisdiction of this action.

II.

Answering paragraph III of said complaint, defendant admits that it is a Texas corporation and has its principal office at Dallas, Dallas County, Texas. It admits that it is engaged in the operation of a radio broadcasting station known as WFAA and in the publication, sale, and distribution of certain newspapers and other periodicals and that it has approximately six hundred employees. Defendant admits that it publishes the Dallas Morning News, a daily newspaper of which more than 100,000 copies are sold daily, the Semi-Weekly

Farm News, of which more than 100,000 copies of each issue, are sold, and the Texas Almanac and Industrial Guide. Defendant denies that any substantial portion of the circulation of these periodicals is in interstate commerce and avers in that connection that they are principally and mainly intrastate publications; that at least 97 per cent of the circulation of the Dallas Morning News is within the State of Texas and not more than 3 per cent without the State of Texas; that at least 90 per cent of the circulation of the Semi-Weekly Farm news is within the State of Texas and not more than 10 per cent without the State of Texas; that the Texas Almanac and Industrial Guide is usually published at intervals of every alternate year and its circulation and activities are almost entirely confined to the State of Texas and to purely intrastate matters. Defendant admits that it purchases substantial quantities of materials for use in the production of its goods without the State of Texas and transports the same from and through other states into the State of Texas. Defendant denies the allegations of said paragraph III of the complaint except as they coincide in detail with the admissions and averments hereinabove set forth in this paragraph.

III.

Defendant denies the allegations contained in paragraph IV of said complaint.

IV.

Defendant denies the allegations of paragraph V of said complaint save and except insofar as they coincide in detail with the admissions and averments heretofore set forth in paragraph II hereof.

V.

Defendant denies the allegations contained in paragraph VI of said complaint.

VI.

Defendant denies the allegations contained in paragraph VII of said complaint.

VII.

Further answering said complaint, defendant avers as follows: At and prior to the effective date of the Fair Labor Standard Act of 1938, defendant was paying its employees on a weekly salary basis. With the possible exception of a few office boys, it was paying each of such employees as much or more than the minimum wages prescribed by said Act. Defendant considered it to the best interests of itself and its employees to continue payment on such basis insofar as it could do so in conformity with said Act. Defendant gave due consideration to said Act with the purpose of conforming fully to its requirements irrespective of the question of its constitutionality and of its applicability to defendant or to its employees. With this end in view, defendant established a basic rate of pay for each of its employees with provision for payment for overtime work performed at a rate of not less than one and one-half times such basic rate of pay and with a guarantee that aggregate pay each week for regular work and for overtime work performed would amount to not less than a certain definite fixed sum. This arrangement was consummated by contract between defendant and each of its employees; it has been adhered to since the effective date of said Act; it is satisfactory to defendant, and insofar as defendant know, or ever has heard except from one G. C. Street, Jr., and other persons purporting to represent plaintiff, is satisfactory to each and all of defendant's employees. However, after such arrangement had been established and had been in force and effect for more than a year, said G. S. Street, Jr., plaintiff's Regional Director at Dallas, Texas, and other persons purporting to represent plaintiff and professing to act in consequence of the complaint of, and in behalf of, some unnamed employee of the defen-

dant, advised defendant that said arrangement under which it was paying its employees was in violation of said Act, in that the arrangement, while admittedly assuring a wage for regular time in excess of the prescribed minimum, and while admittedly providing a wage for overtime of at least one and one-half times the agreed hourly wage for regular time, yet was of such terms, in respect of its guarantee of a uniform compensation for such weekly pay period, as, under the Act, to entitle the employees to still further and additional sums, of substantial amount, beyond the limits of the generally undetermined sums which said Street and said other purported representatives of plaintiff demand that defendant pay. Said Street and other purported representatives of plaintiff at the same time demanded that defendant alter its arrangement with its employees by eliminating from such arrangement any guarantee of uniform compensation. For purpose of obtaining a judicial determination of the questions arising out of such advice and demands, defendant, prior to the institution of this suit, filed a suit in this court with the said Street and certain employees of this defendant as defendants, praying for a declaratory judgment on such questions and controversy as defendant understood the same. Defendant, now, in answer to plaintiff's complaint, avers the facts to be as alleged in its complaint in such cause. It attaches a copy of said complaint to this answer, marked Exhibit A, and makes the allegations of said complaint a part of its answer herein, to the same extent and with like effect as if the same were set forth at length herein. Said Street filed a motion to dismiss defendant's complaint in said suit for declaratory judgment on the ground, among others, that this plaintiff and the Attorney General of the United States should have been made parties defendant thereto, and at the same time plaintiff herein filed the present complaint, which raises, as defendant understands, the same questions and controversy as said suit begun by this defendant. Defendant assumes that plaintiff's contention

in this suit is the same as that set forth in the defendant's said former complaint as being the contention of said Street, defendant therein. If such assumption is incorrect, the defendant respectfully asks that plaintiff herein be required to amplify and clarify its complaint herein so as to show in what particular respects defendant has failed to pay to its employees compensation for overtime work as required by said Act.

VIII.

Further answering in said cause, defendant says that it and its employees are not in any event subject to said Fair Labor Standards Act of 1938; that its business is an intrastate business, and that the control and regulation of wages and hours of its employees are not within the control of the United States, either under the Commerce Clause or any other provision of the Constitution of the United States; that said Fair Labor Standards Act of 1938 was not intended to apply to defendant's business and that its application thereto would be without constitutional authority. Defendant particularly claims that by virtue of Section 213 of said Act entitled "Exemptions" it and its employees are specifically exempted from the operation of Section 206 and 207 thereof, it being provided that said sections shall not apply with respect to "any employee engaged in any retailing or servicing establishment, the greater part of whose servicing is in intrastate commerce."

Wherefore, defendant prays that plaintiff recover nothing by his suit, that defendant go hence without day and recover of plaintiff its costs, and in addition, as against the plaintiff, prays for the same relief as in its complaint for declaratory judgment hereinabove referred to and hereto attached.

Adair Dyer,
Locke, Locke, Dyer & Purnell
Attorneys for Defendant,
A. H. Belo Corporation

Service of a copy of the foregoing answer on August 29, 1940 is hereby acknowledged.

Llewellyn B. Duke,
Attorney for Plaintiff.

Exhibit "A" attached to Defendant's Original Answer.

In the District Court of the United States for the Northern District of Texas at Dallas

A. H. Belo Corporation, Plaintiff,
vs.
G. C. Street, Jr., et al, Defendants.
} Civil Action No. 301.

COMPLAINT

1. A. H. Belo Corporation, plaintiff, complains of G. C. Street, Jr., Wilmer W. Truly, Robert Finklea, and Ruth Buckner, defendants, and respectfully represents to the court as follows:

2. This is a suit of a civil nature, and the ground upon which jurisdiction of this court depends is the fact that the matter in controversy arises under a law of the United States, to-wit, an act of the 75th Congress of the United States enacted at its third session, being Chapter 676 of Volume 52 of the United States Statutes at Large and being entitled "Fair Labor Standards Act of 1938." Such controversy involves the proper interpretation and application of said Fair Labor Standards Act. As is hereinafter more fully alleged, the matter in controversy in this suit exclusive of interest and cost exceeds the sum or value of $3,000.00. Said Fair Labor

Standards Act is not only a statute of the United States but is also a law of the United States regulating commerce. The controversy is in all respects one of which this court has jurisdiction under Section 24 of the Judicial Code as amended.

3. Plaintiff is a private corporation duly incorporated under the laws of the State of Texas and having its principal office and place of business in the City of Dallas, Dallas County, Texas. It is engaged in the publishing and newspaper business. It publishes The Dallas Morning News, a daily newspaper, the Semi-Weekly Farm News, and the Texas Almanac and Industrial Guide. The Dallas morning News has a daily circulation in excess of 100,000 copies, at least 97 per cent of which are distributed within the State of Texas and not more than 3 per cent without the State of Texas. The Semi-Weekly Farm News also has a circulation in excess of 100,000 copies, at least 90 per cent of which are distributed and circulated within the State of Texas and not more than 10 per cent without the State of Texas. The Texas Almanac and Industrial Guide is published at intervals of usually every alternate year. Its circulation and activities are almost entirely confined to the State of Texas and to purely intra-state matters. Defendant Street is an official of the United States Government and more particularly is an official of the United States Department of Labor and is Regional Director for the district or region within which the City of Dallas, Texas, is located of the Wages and Hours Division of said Department. The regional office is located in the City of Dallas, Dallas County, Texas, and said defendant Street is in full charge of said office and exercises supervision, direction, and control over said office and the employees thereof. Said defendant claims to represent, or to be acting at the instance and on behalf of, some employee of plaintiff whose name is unknown to plaintiff but who has filed with said defendant a complaint to the effect that plaintiff has violated said Fair Labor Standards Act of 1938 in the matter of the amount of wages paid for regular

time worked and for overtime, and said defendant claims that as the representative of said unknown employee or in his official capacity he has the authority and is charged with the duty to compel this plaintiff to alter its employment agreements with its employees and to cease to make payment to its employees of uniform weekly sums, even though the same represent a compensation admittedly in excess of the claimed legal minimum for regular time and a compensation for overtime in excess of the claimed legal minimum for overtime, and to cease to make payments otherwise than on a uniform hourly basis for regular time and a uniform hourly basis for overtime on the theory that the amounts paid in excess of the legal minima constitute increases of basic compensation, entitling the employees to still further sums. The remaining defendants, to-wit, Truly, Finklea and Buckner are employees of plaintiff and are members of the class of all employees who, it is claimed by said defendant Street, are subject to the provisions of said Fair Labor Standards Act of 1938 and who also, it is claimed, are entitled to further and additional compensation under said act for services heretofore performed to plaintiff, all as hereinafter fully set forth. Said defendants are hereinafter called employee defendants and are sued herein individually and as representatives of said class of employees which numbers in all about 200 individuals and are too numerous for all of them to be made parties. As far as this plaintiff knows, none of said employees other than the single employee hereinabove referred to and designated as an unknown employee has made any claim that said act had been violated by plaintiff or has claimed to be entitled to any further compensation under said act for services heretofore performed for plaintiff by said defendants, and said unknown employee has made no such claim directly of the plaintiff, or otherwise than by and through the said defendant Street, but all of said employees are nevertheless interested in the controversy hereinafter described, and said defendants are made parties defendant herein, both individually and as represen-

tatives of said class, in order that plaintiff's method of compensating its employees which has been agreed upon between them as hereinafter set forth may be subjected to adjudication and determination as to its legality and propriety, and in order that plaintiff's rights in the premises may be adjudicated.

4. At and prior to the effective date of said Fair Labor Standards Act, to-wit, on or about October 24, 1938, plaintiff was and for a long time theretofore had been paying each of its employees, with the possible exception of a new office boys, as much as or more than the minimum wages prescribed by said act. Plaintiff was paying said employees, however, on a weekly salary basis and considered it to the best interest of itself and of its employees to continue payment on such basis insofar as it could do so in conformity with said act. After giving due consideration to said act and with the purpose in view of conforming fully thereto, irrespective of questions of the constitutionality of such act and of applicability of such act to this plaintiff or to its employees or to particular classes of its employees, plaintiff on or about October 22, 1938, established a basic rate of pay or wages for each of its employees at a stated amount per hour for regular time. In no case was such basic rate of pay less than the minimum rate of pay provided for by said Fair Labor Standards Act of 1938. During the first year after the effective date of said act said basic rate of pay was made applicable to a basic period including the first 44 hours of work performed by any such employee during any week. During the second year said basic period was made 42 hours, and during the third year 40 hours, all as contemplated by said act. For overtime work performed over and above the basic period during any week, each of said employees was to be paid at a rate per hour not less than one and one-half times said basic rate, and such additional amount, if any, as would be requisite to make his aggregate compensation for regular work and overtime work during each pay period not less than a certain definite fixed amount.

Such definite fixed amount so guaranteed varied in the case of different employees, as did also the basic rates of pay. Concurrently with the establishment of said arrangement as to wages and hours, plaintiff and each of its employees entered into a written agreement or contract setting forth the same. A copy of the form of said agreement or contract is attached hereto and marked "Exhibit A" and made a part hereof.

5. Defendant Street as hereinabove set forth purports and claims to be an official of the United States Government and of the Wages and Hours Division of the Department of Labor, having the right and charged with the duty and responsibility to enforce in that region of the United States within which the City of Dallas, Texas, and the place of business of this plaintiff is located, said Fair Labor Standards Act of 1938. Said defendant claims that as a matter of fact plaintiff is not complying with said act, but has violated the same and continues to violate the same. Said defendant claims particularly and has advised plaintiff that the arrangement and contract under which plaintiff's employees have been employed and paid since the effective date of said act as hereinabove set forth is in violation of said Fair Labor Standards Act of 1938 and does not comply with the requirements thereof. Said defendant claims and has advised plaintiff that plaintiff has no right to make any arrangement with its employees whatsoever which will result in uniform compensation for each pay period; that under said act plaintiff is obligated not only to pay a stipulated hourly compensation for regular time, that is, the first 44 hours per week for the first year and the first 42 hours per week for the second year, etc., but also must establish and maintain a uniform compensation per hour for overtime. Said defendant claims that by reason of having paid this guaranteed weekly minimum sum the plaintiff has increased the basis of its compensation to such extent that it is liable to pay a larger sum of its employees for past work and is continuously liable to pay a sum greater than that agreed.

The interpretation of said Fair Labor Standards Act of 1928 insisted upon by said defendant Street and its application to the arrangement which plaintiff has with each and all of its employees affected as to hours to be worked and the rates at which such work is to be paid for as hereinabove set forth is directly contrary to plaintiff's interpretation of said law and its application to said arrangement. Such interpretation is also foreign to and different from the intention of plaintiff and its employees at the time said arrangement was established and the contract hereinabove referred to entered into. It was the intention of plaintiff, which was well and fully understood and concurred in by each and all of its employees to establish as the basic rate for each such employee that rate of pay designated in the contract with him, being not less than the minimum hourly wage prescribed by the act, upon which wages for regular time work should be computed; that compensation for overtime should be computed on a basis of not less than one and one-half times the basic hourly wage with the guarantee that the aggregate should amount to a predetermined sum. As plaintiff interprets said act, even if the same be applicable to its employees, it merely fixes a minimum hourly compensation for regular time and a minimum compensation for overtime in relation to the hourly compensation for regular time and leaves an employer free to make greater payments without violating the act and without a real liability on the employer's part for yet additional sums not contemplated or promised.

6. Defendant Street, in pursuance of his interpretation of said act and its application to this plaintiff and its employees as hereinabove set forth, has claimed and still claims that this plaintiff is indebted to its said employees for additional wages for regular time and for overtime work heretofore performed in an aggregate sum far in excess of $3,000.00. Said defendant takes the position and has stated to plaintiff that it is his duty to cause legal proceedings to be instituted and prosecuted against plaintiff on account of such alleged violations. Said defendant has threatened and still threatens that if

plaintiff does not alter said arrangement in regard to the payment of wages and does not make restitution to its employees for back wages as recommended and demanded by said defendant that he will cause such legal proceedings to be instituted against plaintiff, the exact nature of which plaintiff does not know. Said defendant has also threatened and still threatens to induce one or more of plaintiff's employees to institute suit against plaintiff for such additional wages claimed to be due on behalf of such employee or employees and all other employees of the class hereinabove referred to and has stated to plaintiff that he can and will cause such suit to be instituted and prosecuted against plaintiff. If such suit should be instituted by such employee or employees, plaintiff would be greatly hampered and injured in its business to its damage in a sum of more than $3,000.00.

7. Plaintiff claims also, contrary to the contentions of defendant Street, as hereinabove set forth, that it and its employees are not subject to said Fair Labor Standards Act of 1938; that its business is an intra-state business; that the control and regulation of the wages and hours of its employees are not within the power of the Congress of the United States, either under the commerce clause or any other provision of the Constitution of the United States; that said Fair Labor Standards Act of 1938 was not intended to apply to plaintiff's business and that its application thereto would be without constitutional authority. Plaintiff particularly claims that by virtue of Section 213 of said act entitled "Exemptions", it and its employees are specifically exempted from the operations of Sections 206 and 207 thereof, it being provided that said sections shall not apply with respect to: "Any employee engaged in any retailing or servicing establishment the greater part of whose selling or servicing is in intra-state commerce."

8. Plaintiff avers that there now exists actual controversies between plaintiff and defendants in regard to the proper interpretation of the Fair Labor Standards Act of 1938 and its application to this plaintiff, its bus-

iness, and employees, as hereinabove fully set forth. There is such a controversy as to whether the arrangement under which plaintiff is compensating its employees is in compliance with the act as contended by the plaintiff or in violation thereof as contended by defendant Street. This controversy involves a further question as to whether plaintiff is legally bound to pay its employees as further compensation in addition to sums heretofore paid the amounts which said defendant Street claims is due them and insists be paid them in an aggregate sum in excess of $3,000.00. There is also a controversy between the plaintiff and defendants as to whether said act of Congress is in any respects applicable to plaintiff, its business and employees, and as to whether plaintiff and its employees are exempt from said act as a retail and service establishment the greater part of whose selling and servicing is in intra-state commerce. In regard to these matters plaintiff is entitled to have this court declare the present existing rights and other relations of and by the plaintiff and defendants, and to have such rights and relations declared by virtue of Section 400 of Title 28 of the United States Code Annotated, Judicial Code 274-D. Plaintiff is entitled to have a declaratory judgment and decree entered in this cause under the provisions of said act and to have the rights and liabilities and legal relations of the parties hereto judicially decreed, declared, determined, and fixed. As far as plaintiff knows and believes, neither the employee defendants hereinabove named nor any other employee of plaintiff other than the unknown employee hereinabove referred to, have made any complaint in regard to said arrangement or are in anywise dissatisfied therewith, but the rights of said employees are nevertheless rendered uncertain by the attitude, claims and demands of the defendant Street, and plaintiff is entitled to have such employees made defendants herein and have the legality and propriety of its method of compensating its employees adjudicated and its rights in the premises as between it and its said employees determined.

WHEREFORE, plaintiff prays that this court shall

take jurisdiction of this complaint and of the controversies named existing between the plaintiff and the defendants, that summons may be duly executed and served on the defendants and each of them, and that testimony be taken by the court or under its authority or direction upon the issues herein made as may be necessary to enable the court to declare the rights and other legal relations of the plaintiff and defendants under said Fair Labor Standards Act of 1938 in the respects hereinabove set forth; that the court shall enter a declaratory judgment construing and declaring the rights and obligations of the plaintiff and the defendants and the legal relations existing between plaintiff and the defendants arising out of said Fair Labor Standards Act of 1938 in the respects hereinabove set forth, and with particular reference to the controversy between plaintiff and defendants as hereinabove averred; and that plaintiff have all such different and additional relief as to the court may seem just and proper.

Locke, Locke, Dyer & Purnell

Eugene P. Locke

Adair Dyer

Attorneys for Plaintiff

THE DALLAS MORNING NEWS

Dallas, Texas

October 22, 1938.

The Fair Labor Standards Act which goes into effect on October 24, 1938, provides for the following minimum wages and maximum hours of employment:

First year—25c per hour minimum
44 hours maximum per week

Second year—30c per hour minimum
42 hours maximum per week

Third year—40c per hour minimum
40 hours maximum per week;

except that employees may work more than the number of hours specified above, provided that overtime rates shall be a minimum of one and one-half times the basic rate.

In order to conform our employment arrangements to the scheme of the Act without reducing the amount of money which you receive each week, we advise that from and after October 24, 1938, your basic rate of pay will be _____ cents per hour for the first forty-four hours each week, and that for time over forty-four hours each week you will receive for each hour of work not less than one and one-half time such basic rate above-mentioned, with a guaranty on our part that you shall receive weekly, for regular time and for such overtime as the

necessities of the business may demand, a sum not less than $.....

Very truly yours,

G. B. Dealey
President.

Mr. G. B. Dealey:

This will acknowledge receipt of your letter of October 22nd concerning wages and hours effective October 24, 1938.

Exhibit A

Transcript of Testimony.
Filed March 17, 1941.

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IN THE

DISTRICT COURT OF THE UNITED STATES

NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Phillip B. Fleming, Administrator of the Wage & Hour Division, United States Dept. of Labor vs. A. H. Belo Corporation	No. 308 Civil
A. H. Belo Corporation vs. G. C. Street, Jr., Wilmer W. Truly, Robert Finklea and Ruth Buckner	No. 301 Civil

APPEARANCES:

Mr. George B. Searls
Mr. Llewellyn B. Duke and
Mr. Robert W. Richards,

appearing for Wage & Hour Division
United States Department of Labor

Mr. Adair Dyer and
Mr. Maurice E. Purnell of the firm of
Messrs. Locke, Locke, Dyer & Purnell, Dallas, Texas

Appearing for A. H. Belo Corp'n.

Mr. J. C. Muse, Sr., Dallas, Texas,

appearing for defendants Truly, Finklea and Buckner individually and as representatives of the class of employees.

BE IT REMEMBERED, that on the 3rd day of February, A. D., 1941, before Honorable William H. Atwell, United States District Judge, the following pro-

ceedings were had in the above styled and numbered cause:

MR. PURNELL: If Your Honor please, the case you just called, Belo against Street, was consolidated for purposes of trial, with the case of the Administrator against Belo.

Now, the issues in the two cases are largely the same, save for one issue.

In the answer in the Belo against Street suit, which is a suit for a declaratory judgment, the issue has been raised, whether an actual controversy exists, and whether that suit should be dismissed, issues which were presented preliminarily on motion to dismiss and were overruled by Your Honor some few months ago.

Now, Mr. Searls, representing the Administrator, has suggested that that issue of jurisdiction as to the declaratory judgment suit be tried first, or rather that the evidence on that issue from both parties be received first, and perhaps a ruling on that issue be requested before going into the issues affecting the merits of these two suits. If Your Honor sees fit, we would like that method of procedure, because Mr. Locke, who will be a witness on that issue, and that issue alone, is in Dallas for today, for the purpose of testifying in the case, and has an engagement back in Washington to resume a hearing before the Securities & Exchange Commission, which makes it necessary for him to leave this afternoon.

THE COURT: Well, that is all right. Ordinarily the matter having been ruled on, I do not consider it an open question; I have already ruled on the matter, and when it was ruled, the jurisdiction was fixed, at the time of the ruling there was an actual controversy; you cannot change it by some act of other parties. This suit was filed subsequently, a second suit.

MR. PURNELL: That is our view, too, Your Honor.

THE COURT: There is no question about that. I just do not know; after hearing all of the testimony, I might do something else, I do not know, but that is settled, and I am not going to open a judgment again because someone filed a suit afterwards.

MR. DUKE: May it please the court, that was not necessarily what we had in mind. Our position was that Your Honor's ruling on the motion to dismiss was based upon the allegations in the complaint, the face of the complaint, and our position is that the allegations in the complaint would not be sustained by proof.

THE COURT: Well, that may be. I do not know about that, I was not trying to keep from doing it on the testimony. I believe we can go ahead with the program here, and if Mr. Locke wishes to testify, I would be very glad to hear him.

MR. PURNELL: Then we will call Mr. Donosky as our first witness.

* * * * *

TO BE ELIMINATED

(appearing in Original but not to be shown in record on appeal)

PAGE 6

"Beginning sixth (6) line from bottom continuing to middle of page seven (7) to beginning of testimony by M. M. Donosky."

* * * * *

M. M. DONOSKY,

Being first duly sworn, examined in chief by Mr. Purnell, testified as follows:

Q Your name is M. M. Donosky?

A That is correct.

Q You are treasurer of the A. H. Belo Corporation?

A Yes, sir.

Q A. H. Belo Corporation is the publisher of the Dallas Morning News?

A Yes, sir.

Q And the owner and operator of Radio Station WFAA?

A Yes, sir.

Q And in part Radio Station KGKO?

A Yes, sir.

Q And publisher of the semi-Weekly Farm News until the discontinuance of that publication on December 31, 1940?

A Yes, sir.

Q And publisher of the Texas State Almanac and Industrial Guide?

A Yes, sir.

Q Will you state whether you have had occasion to talk with Mr. G. C. Street, who is the Regional Administrator in Dallas of the Wage & Hour Division of the Department of Labor?

A Yes, sir, on several occasions.

Q Will you state approximately when the first occasion for such a talk arose?

A Around the latter part of January or the early part of February, as best I can recall.

Q Shortly after Mr. G. C. Street came to Dallas as Regional Administrator?

A Yes, sir.

Q Regional Director. Will you state how many such talks, as best you can recall, occurred between that date and the date of the filing of this suit of A. H. Belo Corporation against G. C. Street and others?

A Mr. Purnell, it would be hard to state how many, because there were so many with Mr. Street and with other members of that Bureau, I think we talked to about eight or ten people in that Bureau over the period of the past years on different occasions; and, I talked to Mr. Street, I would say at least—at least half a dozen times.

Q Will you state whether the regional di-

rector, Mr. Street, caused an investigation to be made of the wage and hour practices of the A. H. Belo corporation?

A Yes, sir.

MR. SEARLS: I pray your Honor's judgment.

THE COURT: Pardon?

MR. SEARLS: I pray your Honor's judgment on that question as asking for a conclusion.

THE COURT: Well, it is rather conclusive, but we will see where it leads.

Q (BY MR. PURNELL) Will you state whether people purporting to represent the wage and hour division came down to the News offices to ask questions about your wage and hours practices?

A Yes, sir.

Q Will you state when that course of questioning began, roughly?

A The first occasion was Mr. Street's visit, when he came down after telephoning to Mr. Ted Dealey, saying that he wanted to come down and meet the folks on the Dallas News; that he was just moved up here to Dallas and he was invited down. And, I met him on that occasion and in the conversation Mr. Street asked if we were complying with the wage and hour law, and he was told by me that we were, in accordance with the interpretation of our attorneys.

Mr. Street said, "Well, that is fine." And then, the next occasion was shortly thereafter, and Mr. Ross came down.

Q Who is Mr. Ross, or rather, who did Mr. Ross represent himself to be?

A He represented—he handed us his card, and I don't know whether he was an agent or investigator for the Wage & Hour Division of the United States Department of Labor.

Q All right. Did any others, other than Mr. Ross, come down, assuming that capacity?

A After that, yes. Well, Mr. Street came

down several times to discuss the matter, while Mr. Ross was there, and then Mr. Florer came down, and then a Mr. McBroom, I am trying to remember all the names, if I can. Mr. McBroom came down. Mr. Hight came down and Mr. Richards was there on one occasion and Mr. Smythe came down and then we had conferences with Mr. Duke and Mr. Tam Buro.

Q All right, without going into too much detail, what did those people in general do while they were down there?

A Well, Mr. Ross came in to check our payroll records and our time cards. That was the job that he was doing there, and then Mr. Street came down to discuss some of the points, while Mr. Ross was there, and then Mr. Florer came down to check some of the records, and then Mr. McBroom and Mr. Hight came down to check some of the records at different occasions; and then Mr. Richards was down there one time, going into something, I don't know whether Mr. Richards stayed or left someone else there with them, I have forgotten.

Q All right, now, during or after this activity on the part of the gentlemen you have named, was any claim made against A. H. Belo Corporation to you, or in your presence, by anyone with respect to the legality of your wage and hour practices?

A Yes, sir, the claim was made by Mr. Ross, and by Mr. Street to Mr. Moroney and myself, that we were violating the wage and hour law.

Q Now, will you state what was said by Mr. Street and by Mr. Ross on that occasion?

A Well, Mr. Ross wanted to check our time cards and payroll records, and he wanted the instructions that we had issued, and any letters or anything pertaining to the matter all of which we supplied to him, that we had.

We let him have everything that he wanted

there, and he was checking those records, and then he came across the instructions, and said, during the conversation, "Well, here, you are violating the law, you can't—you can't do this."

We were paying our employees on a regular weekly wage basis, all of the employees except the employees who are working under contract with unions, and we wanted to know in what respect and he told us that we could not put into effect—and the same conversation was held with Mr. Street later, because Mr. Street came down the following day, or shortly thereafter, to discuss some of the same points. He said, "You cannot put in a basic hourly rate like this, and then pay weekly wage, without following the details as outlined by the Administration," in substance. The point that he was bringing out was the fact that on these our employees were paid a basic hourly rate, plus time and a half over beyond forty-four hours, the first year, and then there was a bonus added to that, to give a guaranteed weekly wage, and he said that was a violation of the law, and we could not do that.

Q Did he say what the consequences of such law violations were?

A Yes, sir, in the conversation both he and Mr. Street said that we would have to pay to the men—we would have to refund that money to the men or refund to the men that money that he would calculate, and they also pointed out to us the penalties of the law, criminally, although Mr. Street told us once or twice that he was not going to exercise that provision of the law, that that was a criminal provision for violation.

Q Did he point out to you the penalty of the law was liability for restitution to employees for back pay?

A Yes, sir.

Q Did you ask him at any of these occasions,

prior to the filing of the suit, Belo against Street, how it happened this investigation was instituted?

A Yes, sir. In fact, I asked Mr. Ross the question, after he had been there awhile, I said, "Why are you coming down here and checking?" Mr. Street asked us about the same, and we told him we were not violating the law, and we were in compliance with the law and in accordance with the interpretation of our Attorneys, and Mr. Street said, "That is fine, all I wanted to know."

I said, "I just want to know why you are coming down here, I don't just understand."

And he said, "Well," he said, "those are my instructions."

I said, "Do you have any complaint from anyone?"

And his first remark was "No, sir," and afterwards and in further discussions with him, after he had been around there for awhile, I pointed out to him the splendid working conditions, and splendid treatment of our employees, the wages that were away above the minimum the law required.

I said, "Why are you down here? I don't understand it? Why don't you go out and pick on some of these sweat-shops and things, and where they have conditions, according to my understanding the law was supposed to remedy?"

He said, "Well, those are my instructions."

So, a few days thereafter Mr. Street came down, and said, "I want to clear up a misunderstanding around here, I am afraid."

And I said, "What is it about?"

He said, "Well, you folks have the impression I double-crossed you."

And I said, "No, we haven't, Mr. Street, I don't know why you get that impression."

He said, "You wanted to know why, from Ross, we were checking you."

I said, "Well, of course, it is a natural question," or something to that effect.

He said, "We are down here"—he said, "We got instructions to check you."

I said, "Well, have you got any complaint against us?"

Mr. Street said, "Yes."

I said, "Well, who is the complaint from?"

He said, "Well, I can't tell you that." So many times we asked him, he and Mr. Ross, on many occasions who the complaint was from, and they said they couldn't tell us.

Q Now, was it specified that the complaint was from an employee?

A Yes, sir, one of our employees.

Q Did you probe about to find out if you could, to find out who it was?

A I probed about a lot. I tried to find out from a process of elimination.

I said, "What department?" And Street and Ross said I couldn't get to it that way, that they weren't going to give me that information, they couldn't do it.

Q Did talk of that nature with respect to complaint of some unnamed employee occur only once or more than once, during—

A Oh, several times.

Q Was each of those times prior to the institution of this suit?

A Yes, sir.

Q Was it ever prior to the institution of this suit said that such complaint had been withdrawn, or that such claim was not actually received, or anything of that sort?

A No, sir, it never was stated, anything to the contrary by them, and I was anxious to find out, because I hadn't heard of any dissatisfaction from any of our employees, and I am in contact with them all the time, and I think I would have

known if there was any dissatisfaction in any department.

Q Was a figure ever mentioned in these conversations with respect to the amount of liability to employees?

A Yes, sir, they prepared some sheets that they wanted—that is, Mr. Ross and Mr. Street did, ordered and prepared a set of sheets they wanted us to check and go through with them and tell them who we thought were exempt under the law, and they had some calculations there, minimum and maximum.

MR. PURNELL: Now, if Your Honor please, I think we may suspend the examination at that point, in accordance with Mr. Searls' suggestion with the right, of course, to recall this witness on other issues as the case develops.

THE COURT: All right.

MR. PURNELL: Cross examine.

MR. SEARLS: I have no questions at this issue, Your Honor.

MR. PURNELL: We will call Mr. Locke.

EUGENE P. LOCKE,

Being duly sworn, examined in chief by Mr. Purnell, testified as follows:

Q Your name is Eugene P. Locke, and you are attorney for A. H. Belo Corporation?

A Yes.

Q Will you state, Mr. Locke, whether you had occasion to engage in a conference in Washington with Mr. G. C. Street and others, on the question of the wage and hours practices of A. H. Belo Corporation?

A Yes. I have been out of town a great deal of the time, spending a good deal of time in Chicago, and I had had no detailed conferences with Mr. Moroney or Mr. Donosky, but I had heard over the telephone from them, that Mr. Street was

here and examined their records, and made a claim that employment agreement with their employees, and their practice were not in accordance with the interpretation of the act in Washington, and it was desired that we have a general conference here in Dallas regarding the matter.

Well, now, because I was out of town, and because, as I understood, pressure was being brought on Mr. Street by Washington to do something, I said that I was going to be in Washington, and I would communicate with the Wage & Hour Division, and would tell them that there was to be such a conference, and that would relieve the pressure for the time being. And, accordingly, I went to the Wage & Hour Division one day to see a named officer, whose name Mr. Duke, I believe, had given me over the phone.

I hadn't had any conferences with Mr. Street or Mr. Duke, and I explained to the secretary of this person, the person being engaged, that I had been out of town, and that we were to have a conference, and that is the reason there had been no conference.

Now, at a later date, I happened to be—I was in Washington before the Securities & Exchange Commission, and Mr. Street was told that I would be there, and he met me in the Hotel, the Carlton Hotel, in the morning of my arrival at the hotel, and he said he was anxious to take me over to the Wage & Hour Division for a conference. And, I told him I would be very glad to go with him as soon as I had been relieved of the immediate appointment before the Securities & Exchange Commission. I was continuously, throughout the day, with the Securities & Exchange Commission, until, I think, about 5:00 o'clock in the afternoon, and Mr. Street was at the Securities & Exchange Commission at different times during the day, waiting for me to be excused. And, at about 5:00 o'clock we took a

taxi from the Securities & Exchange Commission to the headquarters of the Wage & Hour Division, and I was introduced there to a man whom I think was—had the title of Associate Director; my recollection is his name was Jacobs. He was the chief one in charge, and Mr. Street was there, and then a Mr. Clarence DuBose was there, and then three members of the legal staff, I do not recall the names of the members of the legal staff.

Q Just a minute. Was this conference that you are now speaking of, prior, in point of time, to the filing of the declaratory judgment suit, Belo against Street?

A Yes, it was. It was in the afternoon, as I recall, on Friday, June 28, that this occurred.

Q Now, go ahead, if you will, and say what occurred?

A After introductions and greeting all around, Mr. Jacobs said, "Now, I know Mr. Dealey very well, and I have known the Dallas News for years. I was once employed by the Dallas News, and Mr. DuBose was formerly employed by the Dallas News as a reporter in Dallas or Galveston." I do not remember.

And he said, "We know personally Mr. Dealey, and we know the very fine and generous treatment the News has always given to its employees in the matter of compensation and in the matter of time, and everything, and I want you to know that we would not have conducted this investigation, we would not have done what we have done, or made these demands, if it was not for the fact we had a complaint from an employee of the News."

And I said, "I am rather very much surprised at that, because I did not know there was any complaint, any dissatisfaction. However, I have not had an opportunity to talk to Mr. Donosky, or Mr. Moroney about this, because I have been out of town."

And Mr. Jacobs then said, "Well, maybe I am speaking out of bounds in telling you about that." And the leader of the three members of the legal staff immediately said, "Yes, I think, Mr. Jacobs, you are, it has not been our policy to say anything about the employees' complaints."

He said, "Well, I wanted you to know it."

And Mr. Street said, "Well, I knew that there was a general discussion on the subject and that is the reason I haven't said much about it down there."

Then, as I recall, Mr. Jacobs asked Mr. Street what his investigation showed, and Mr. Street said that he had not completed his investigation, but rather thought the amount of underpaid time for overtime, under the interpretation of the commission, would amount to something like thirty or forty or fifty or sixty thousand dollars, as I recall, it depended on whether employees were exempt and depended on a good many things, and then some questions were asked of me, as I recall—I made no memoranda of this conversation, I had no idea I would have ever to testify about these conversations.

Some questions were asked of me, as I recall, about particular employees, whether they would or would not be exempt under the Act.

Well, I said, "Well, now, I would just like to explain to you how this all happened." And I said, "I don't know about these individual employees, I haven't had a conference about these individual employees, but," I said, "here was this wage and hour act which went into effect, and we had to determine, just before it went into effect, a few days, as I recall, when we were consulted, what should be done."

And I said, "There were no rules anywhere, no interpretations of the act, and here was an act, which we thought was motivated by a desire to prevent sweat-shop conditions, to prescribe

minimum wages, and it was intended primarily for factory workers, but its language is more extensive and applies to more than factory workers and persons who had not previously been employed on an hourly basis."

And, I said, "The attitude of the News was that, irrespective of whether it was engaged in Interstate Commerce, to any extent, so as to subject it to the act, and irrespective of the question of whether particular employees or groups of employees were exempt by the terms of the act, if it could comply with it, without increasing its outgo for its expenses, its payroll; of course, it had to keep that within its income to keep going, it should do it, and wanted to do it."

And, I said, "We came to the conclusion that the act had to do merely with prescribing the minimum wage, and that did not apply to anyone in the News, with the exception of, perhaps, one or two boys, or prescribing overtime compensation of not less than an hour and a half, I mean one and a half times the regular hourly compensation."

Now, I said, "We saw no reason why we had to convert to an hourly basis, we had been paying our men uniform monthly compensation or half-monthly compensation, and that is the basis they liked, it was the basis we liked, it was the basis that brought about the best relations, the best work, but the hours of the business fluctuate, and the business of different employees and groups of employees fluctuate.

"Now, we had to prescribe an hourly wage, that we could prescribe an hourly wage and pay not less than one and a half times that for overtime, and then pay enough additional overtime; not have a regular fixed compensation for overtime, but a minimum of one-and a half times the regular hourly compensation, and enough over to guarantee the employees a certain aggregate com-

pensation at the end of the month, which would be uniform, with the arrangement theretofore existing; I thought that was a compliance with the law."

And, I told him, "I thought so, and I think so now."

I said, "I have tried to keep in touch with all of your announcements, your regulations and decisions."

I said, "We have a labor service," and I said, "I have seen nothing in the Act, and I have seen no regulation, I have seen nothing from your department that interferes with that interpretation."

I said, "Do you contend that the compensation by the month has to be uniform—I mean, that the compensation cannot be uniform by the month or by the day? That it has to fluctuate in accordance with the hours of employment?"

He said, "Yes."

I said, "Do you contend that the compensation for overtime has to be a fixed sum, a regular sum, and that it cannot fluctuate, it will be sometimes more than it is at other times, if at all times it is at least one and a half times the regular wage?"

He said, "Yes."

I said, "Well, now, I haven't seen any announcement, any regulations to that effect." I said, "If you can point me to any language of the statute, or if you can point me to any regulation, or if you can point me to a decision, I would like to know it, because that is contrary to my view of what the statute means."

"Well," he said, "I don't know that we have anything like that." He said, "It has always been our position, has always been the position of the department that that was true." He said, "Maybe we ought to put you on the list of our mailing list for sending all the information that we have."

I told him that I would be very glad if he would do that. I told him I had seen a specifica-

tion of how regular time was to be computed from the standpoint of the department, for the calculation of overtime, and I had seen a statement in an interpretive bulletin, not in the form of a counsel's opinion, but in the form of some rather general statement that had reference to attempts to evade the act, but that I did not consider them applicable here.

And then, this leader of this legal staff said that they had always taken this position, and he said that we were not the only ones that had pursued this practice, but a great many others pursued the practice.

I said, "Has there been any court decision on the matter, anyone bring any suit, and had this question tested anywhere?"

He said, "'No," there had been no court decision, "but," he said, "there is a case now pending at Minneapolis." He said, "In which the precise question was involved."

I then inquired for the style of that case, and the docket number, and I told him I would like to have copies of the pleadings in the case, and I would like to have copies of the briefs in the case, and he then went into the other office for a moment, and then he came back with the statement that he could not give me the style of the case, and he had no copies of the pleadings, and he did not know whether any brief had been prepared. He had no copies of the brief.

After I got home, I got in communication with the clerk, or my office did, and we finally located the case, but there had been no decision in it.

Well, after that had been stated, Mr. Jacobs said, "Well, now, Mr. Locke," he said, "to be perfectly plain, that there is no criminal responsibility on the part of the Belo Corporation, and I want you to know that we have never contemplated any criminal action, it is perfectly plain

there has been no willful violation of the law, they consulted attorneys, and this is your opinion with reference to the matter." And, he said, "What is the attitude of the News about this?"

"Well," I said, "Mr. Jacobs, it is this:" I said, "You know Mr. Dealey very well, and Mr. Dealey doesn't want to have any controversy with the government, he doesn't want to have any litigation at all; his disposition is to get along with the government, and with the Departments of the government."

I said, "If your interpretation of this is what you say, and you tell us that definitely in black and white, that there can't be any uniform compensation by the pay period, there can be no fluctuating compensation for overtime, there must be a certain definite compensation for overtime, and the compensation must fluctuate in accordance with the hours spent, we will do that in the future, we want to comply with the interpretation of a responsible department of the government, of this law."

"But," I said, "We want to tell our men that, they don't want that, and we don't want that, but we do it simply because you tell us that is your interpretation and that should be done."

"But," I said, "we do that"—before I said that, the leader of this legal staff said, "Well, now, Mr. Locke, Mr. Dealey, I assume would not have any objection to a consent decree, would he, on the subject?"

And I said, "Yes, he would."

I said, "We do not admit that this practice is not in strict conformity with the act, we think it is. What we do, we want to do voluntarily, and want to do because you, as a responsible department, say this is your interpretation of the law, and should be done."

And then someone, I think the general counsel, the leader of this legal staff said, "What about

this figure of underpayment of overtime compensation?"

"Well," I said, "if we make this arrangement with the government, we want that to square us with your department."

And the leader of this legal staff said, "Well, now"—I think Mr. Jacobs said, "what about that?"

And the leader of this legal staff said, "I don't think that we could consistently do that, on account of what has occurred with the employees."

And then it was getting rather late, and my recollection is that Mr. Street injected the remark at that stage, and said, "Well, now, I will tell you. My investigation is not complete down there." He said, "Suppose I go back and complete the investigation and then we will have a talk down there, and I will make a full report up here."

And, that was agreed to by everybody, and the conference ended.

Now, my recollection is that was around 6:00 o'clock or a little after 6:00, it may have been 6:30.

Q Now, did it ever come to your attention between that date and the date of the filing of the declaratory judgment suit that Street thereafter renounced any relationship with an unnamed employee?

A No, sir.

Q Did that conference represent the existing situation as you understood it at the time the declaratory judgment suit was filed?

A Yes. I came back with the rather definite understanding that there had to be a litigation about this matter, a litigation about the alleged underpayment for overtime compensation, and the validity of the employment compensation arrangement that was made.

MR. PURNELL: That is all.

MR. SEARLS: No questions, Mr. Locke.

MR. PURNELL: Now it is agreed that Mr. Locke may be excused?

MR. SEARLS: Yes, Mr. Locke may be excused.

J. M. MORONEY,

Being first duly sworn, examined in chief by Mr. Purnell, testified as follows:

Q Your name is J. M. Moroney?

A That is correct.

Q You are secretary of the A. H. Belo Corporation?

A That is correct.

Q And have been for some time?

A Yes.

Q Were, throughout the year 1940?

A Yes, sir.

Q You heard Mr. Donosky's testimony with respect to several conferences or talks with Mr. G. C. Street, Jr.?

A Yes.

Q Were you present at one or more of those talks?

A Yes.

Q Did those talks take place prior to the filing of this suit?

A They did.

Q Did Mr. Street, in any of those talks, make a complaint or a charge against the News as to its wage and hour practice?

A Well, he said he didn't think we were in compliance and our reply was that we thought we were in compliance.

Q Did he say what the consequence of such non-compliance would be?

A Yes, he pointed out the back pay that might have to be paid, and I think you have to pay double, and then he pointed out the criminal statute, the criminal penalties, and I pointed out to

him we were not trying to defy any law, or go against any law, we wanted to comply, and we thought we were.

Q Was he asked in your presence, how it happened that this investigation was instituted?

A Yes.

Q Did he reply to that?

A Yes, I think probably I asked him the question myself, on one or two of the conferences, and he said he had a complaint, or Washington had a complaint, and he was instructed to make an investigation on the matter.

Q Did he say whether the complaint came from an employee or not?

A He said it was an employee.

Q Was he asked who the employee was?

A Yes, we asked him quite often; I did myself on several occasions, hoping maybe we might find out who it was, but he said we would just have to leave it without a name. He just had a complaint.

Q Did he say that in making the investigation he was acting in consequence of that complaint of the employee?

A That is correct, he did.

MR. PURNELL: That is all.

MR. SEARLS: No questions.

MR. PURNELL: Now, if Your Honor please, that includes the evidence that we have on this restricted issue.

MR. SEARLS: If Your Honor please, may I at this time present a motion which is, Your Honor please, in the answer of the defendant Street, to dismiss No. 301 on the ground that the evidence does not show any controversy between the A. H. Belo Corporation and Mr. Street. I understand that Your Honor has already ruled and the motion to dismiss was prepared on the basis of the pleadings that there was no controversy alleged between the plaintiff and Mr. Street

as an official, but that there was a controversy between them, and the individual representative of some employees.

I would like to, if Your Honor please, have that phase of the matter out of the way now.

THE COURT: Yes, I overrule the motion, counsel, in view of your testimony at this time.

All right, call your first witness, now, on this other matter.

MR. PURNELL: Is it Your Honor's desire that we shall go forward?

THE COURT: Well, I think they would have the right to go forward.

MR. PURNELL: I just wanted to see which was Your Honor's desire, for them to go forward.

M. M. DONOSKY,

Being recalled on behalf of G. C. Street, Jr., et al, examined in chief by Mr. Searls, testified as follows:

Q Mr. Donosky?

A Yes, sir.

Q Will you please tell the court who the officials of the A. H. Belo Corporation are?

A Yes, sir. Mr. G. B. Dealey, Chairman of the Board; E. M. Dealey, President; J. M. Moroney, Vice-President and Secretary, I am treasurer and we have a business manager and various other officials down there, and managing editors, and so forth.

Q Now, I believe you have already testified that that corporation has been engaged in publishing the Dallas Morning News and the Semi-Weekly Farm News, haven't you?

A Yes, sir.

Q And the Texas Almanac and Industrial Guide?

A Yes, sir.

Q Yes, sir, and in operating formerly one and now I believe two radio stations?

A One outright, and an interest in the other.

Q One-half, then?

A All right, sir.

Q Now, Mr. Donosky, I show you this, and this one?

A Yes, sir. Let me see the date, in case you ask me about the date.

Q Now, you notice, Mr. Donosky, it is dated October 28, 1938?

A Yes, sir.

Q That is a copy of some instructions that were sent out on that date to the department heads in your business?

A That is correct.

Q To all of the department heads?

A Yes, sir, and that followed the October 28, 1938—I may mention, the law went into effect October 28, 1938, as you know well, of course. We had to work in a hurry, we hadn't gotten any instructions or anything out about the thing, it was rather vague, you know, the details, and we had been conferring with our attorneys and had worked out that contract form, that had already been signed, and we had talked to the Department Heads prior, too, about a week or so prior to the date of that letter, and that letter merely told them about the future handling.

Q This talk that you had with your department heads, that related, did it not, to the—

A To the keeping of the law.

Q To the keeping of time records?

A To the keeping of time records, and the contracts that we were going into with the employees individually, and practices generally, as best we could understand them from our conversations about the law.

MR. SEARLS: Do you wish to see that, Mr. Purnell?

Your Honor, we have here a stipulation between counsel as to the use of certain copies, in

place of original records of the corporation. I should like to offer this stipulation.

THE COURT: That is all right.

(At this time the stipulation above referred to was marked by the reporter, "Plaintiff's Exhibit No. 1").

Q (BY MR. SEARLS) Now, Mr. Donosky, I show you two groups of typed sheets, headed "Wage Computation Sheets."?

A Yes, sir.

Q There is one large group, and a smaller?

A Yes, sir.

Q Now, you have seen those before, have you?

A I have seen groups of these sheets; now, I can't tell you whether they are the same ones that I had seen. Our attorney had received two batches like those from you folks.

Q There is no question about it.

MR. PURNELL: We will stipulate those are the sheets, or the copies; I haven't received my copy. Do you have that here available?

MR. SEARLS: Well, then, I understand, Your Honor, that it is stipulated that those are the sheets referred to in this stipulation here, which may be used.

I might state, Your Honor, for the record that the larger group consists of transcriptions relating to employees in the News Building, and the smaller group of transcriptions relating to employees at Radio Station WFAA.

(At this time the instrument first referred to above being wage computation sheets for employees in the Dallas News Building, was marked by the reporter, "Plaintiff Exhibit No. 2.)

(The instrument above referred to and headed "Wage Computation sheets" of employees at Radio Station WFAA was marked by the reporter, "Plaintiff's Exhibit No. 3".)

MR. SEARLS: And I offer also, Your Honor, this copy of a notice to all department heads, dated October 28, 1938, about which I asked Mr. Donosky.

(At this time the instrument above referred to and designated "Copy of notice", was marked by the reporter, "Plaintiff's Exhibit No. 4.)

Q (BY MR. SEARLS) Now, Mr. Donosky, did you also issue to all department heads a notice of which this one dated October 19, 1939, is a copy?

A Well, now, I didn't issue those. These are signed by—they are issued by Mr. G. B. Dealey.

Q Well, you knew they were issued?

A Yes, sir; yes, sir, I had a hand in the preparation.

Q Yes, sir.

THE COURT: That is not October 28, 1938?

MR. SEARLS: This is 1939, Your Honor.

THE COURT: Yes, 1939.

MR. SEARLS: October 19, 1939.

THE COURT: All right.

MR. SEARLS: I will offer this, Your Honor.

(At this time the instrument above referred to and designated "Notice to All Department Heads," dated October 19, 1939, was marked by the reporter, "Plaintiff's Exhibit No. 5".)

Q (BY MR. SEARLS) Well, now, Mr. Donosky, was there a similar notice to this one of October 19, 1939, a similar one issued in 1938?

A In 1938?

Q Yes, sir?

A No, sir, there was the one I was telling you about. We had looked into the thing in such a hurry there, and we had discussed the matter with everyone, and then issued the instructions of October 28, 1938, as to the handling of the future, and we were all discussing it.

Q That is, were issued in October 1938, as to these letters addressed to the employees?

A Yes, sir.

Q Any instructions given at that time were oral?

A As well as I remember, we wanted—we had the form letters there, we had them all mimeographed, or multigraphed, and had the department heads in to discuss the entire matter with them, and gave them all, and each one, a batch of the letters, so that they could distribute them to their employees in their respective departments.

Q Can you tell me, does this Exhibit 5 contain a substantially correct statement of the system that your company put into effect in October, 1938?

A That is practically the system, I would say; yes, sir. There might have been some changes that occurred during the year. There were, no doubt, as we had heard more about the law from Washington.

Q But in its essence, the plan you put into effect in 1938 is the same you followed in 1939?

A With changes in there.

Q And that you are following now?

A That is right, with certain modifications in there to meet conditions that had come up in the meantime.

Q Mr. Donosky, I show you two other batches of paper?

A Yes, sir.

Q Now, those are copies, are they not?

A Yes, sir.

Q Of letters that were addressed to various employees of A. H. Belo Corporation?

A Yes, sir.

Q And that were acknowledged by those employees and returned to the company?

A That is right.

Q And those are the letters, or the contracts,

I believe is the word that you used, that you referred to a minute ago?

A These are not all of them, you have left out the first letter; this pertains to the fair labor standards act which went into effect on October 24, 1938. Now, these are for employees that started working after October 24, 1938, or changes where the basic rates were changed and new contracts were made on them. You don't have the first letter that the—the contracts that were made with the employees, where it says, "The fair labor standards act which went in effect on October 24, 1938", and we tried to explain to them the best we knew, what the fair labor standards act meant, and so forth and so on, and we told them we wanted to make an agreement with them to pay them so much per hour, a basic hour, and overtime, time and a half and so forth.

Q Do you have one of those original letters there?

A I haven't, but I will get it, I think I have one.

Q I believe you were asked to bring two or three, were you not?

A Yes, sir. I am surprised you haven't got them. That is all we had down there. Mr. Ross was checking into a batch of them.

MR. PURNELL: We have the originals.

Q (BY MR. SEARLS) Mr. Donosky, I show you this form of letter dated October 22, 1938, on the letter-head of the Dallas Morning News, addressed to James S. Alderman, Station WFAA, Dallas, Texas, signed G. B. Dealey, President, and also signed below, "James S. Alderman."

A Yes, sir, that is one letter.

Q That is one of the original letters, isn't it?

A Yes, sir. Here we explained to them the law, and we had it listed in there about the third year. We said the third year, the minimum goes

up to forty cents per hour, and should go up to sixty—I mean the sixth year, and that is the contract employees sign there, James S. Alderman.

Q Well, now, Mr. Donosky, will you compare this with that form there, please?

A All right, sir. Yes, sir.

THE COURT: That is, you are comparing it now with the form that went out to employees who went to work after October 24, 1938?

A Yes, sir.

MR. SEARLS: That is right.

THE COURT: All right.

A All right.

Q (BY MR. SEARLS) Well, now, Mr. Donosky, is it correct to say the only difference between the two forms is in the first line, and in the place where you call attention to an error in your original forms?

A In the first line? No, sir, that is not correct. There is a change in the first line there, says "Which went into effect." And this says, "Which goes into effect." And then, in this first letter, the first letter here prior to enactment of the law, we said, "First year—25¢ minimum, forty-four hours maximum per week. Second year—30¢ an hour minimum, forty-two hours maximum per week. Third year—40¢ per hour minimum, forty hours maximum per week, except employees may work more than the number of hours specified above, provided that overtime rates shall be a minimum of one and one-half times the basic rate."

Q All right.

A In the new letter here we changed the forty-cent minimum doesn't go into effect until the sixth year. We corrected that when the new letter came out, and then down here in the last paragraph on this page, it says, in the first letter, in the letter prior to the enactment of the law, it said: "In order to conform our employment ar-

rangements to the scheme of the act without reducing the amount of money which you receive each week, we advise that from and after October 24, 1938, your basic rate of pay will be so many cents per hour for the first forty-four hours each week, and that for time over forty-four hours each week, you will receive for each hour of work not less than one and one-half times such basic rate above mentioned, with a guaranty on our part that you shall receive weekly for regular time."

Now, down here in the letter, in the subsequent, the first letter subsequently, we don't say anything about reducing the amount of money which you receive each week, and so forth.

And then we bring in, the next year, we had a letter here where we point out the overtime after forty hours and forty-two hours.

Q I might say, Your Honor, Mr. Purnell, counsel for the Belo Corporation, and we, have agreed to state that the letter, page of the letter which were shown Mr. Donosky, and which are referred to in the stipulation, which is Exhibit 1, are intended to represent the original letters issued on October 22, 1938. That, I understand, because of a lack of forms, they were made up on the forms used, the letter later, and I will offer this one letter, addressed to Mr. Alderman, so that Your Honor can see the difference in the two.

THE COURT: All right.

MR. PURNELL: It may be stipulated that the one letter addressed to Mr. Alderman is typical of the form that was used as to the letter dated October 22, 1938.

MR. SEARLS: Yes.

MR. PURNELL: And that the batch which the witness has referred to, is typical of the form used at all dates, used after October 22, 1938.

MR. SEARLS: Yes, and that the copies dated October 22, 1938, are filled in.

MR. PURNELL: Correctly specify the filling in in the blanks.

MR. SEARLS: But that the originals are on this form addressed to Mr. Alderman.

MR. PURNELL: That is right.

MR. SEARLS: I offer these two groups, Your Honor. I will state for the record that the larger is again of employees of the News, and the smaller one of the employees of WFAA.

(At this time the instrument above referred to containing letters addressed to employees of the Dallas News was marked by the Reporter, "Plaintiff's Exhibit No. 6".)

(The instrument above referred to containing letters addressed to employees of WFAA were marked by the Reporter, "Plaintiff's Exhibit No. 7".)

MR. SEARLS: Then I will offer also this original letter addressed to Mr. James S. Alderman.

(At this time the instrument above referred to, being letter addressed to James S. Alderman, dated October 22, 1938, was marked by the Reporter, "Plaintiff's Exhibit No. 8".)

Q (BY MR. SEARLS) These letters which were issued in October, 1938, to employees, Mr. Donosky, were signed by the employees, and returned to the company, were they not?

A That is correct, yes, sir. Now, those were on employees that were not covered by—that were not working under contract with—we have three departments, as you know?

Q Yes. That would mean about how many employees received such letters?

A Oh, I would say somewhere in the neighborhood of four hundred, somewhere around that

figure, three hundred to four hundred, somewhere around there.

Q Now, did any of the employees decline or fail to sign and return the letter?

A Not that I heard of.

Q Now, after October, 1938, in the case of some of the employees, did the company have other letters signed?

A Other letters than those?

Q Other letters than the original letters on October 22?

A Yes, sir, when the law was changed, and the basic rate had to be increased, or the salary increased, the weekly guaranty figure was increased in order to meet the changes in the law, why, those new letters were signed, yes, sir.

Q That is a number of the employees signed additional letters in October of 1939?

A That is correct, yes, sir.

Q Did they sign them in October, of 1940?

A Yes, sir. I believe there were some in 1940. I know there was a check made to see, and I believe some of the junior help, office boys and such as that, might have been changed there.

Q Now, did a number of employees who received increases in pay at one time or another, sign additional letters?

A Yes, sir.

MR. SEARLS: Mr. Purnell, may we stipulate that the letters there represent all that we could find for the employees whose names appear there?

MR. PURNELL: Yes, that is all right.

Q (BY MR. SEARLS) Now, Mr. Donosky, prior to October, 1938, when you issued this notice to department heads, had you required your employees to keep a record of time?

A No, sir, just in those departments where they had been paid on an hourly basis, that was all, and then the foreman did that.

Q That was the Union Department?

A And we would get slips from them, that is right, and then we had a mailing room that was not unionized where we have a number of employees employed on an hourly basis, doing extra slipping on Saturday nights, and such as that, and had several sections of paper to slip.

Q But, you had no particular general rule for time keeping?

A No general rule for the other employees, that is correct.

Q Now, you have been requested to produce some sample time cards. Have you those, Mr. Purnell?

Well, we will go on for a minute, Mr. Donosky. You understand, do you not, that these transcriptions which are exhibits 2 and 3, are made up from your payroll and time records, do you?

A That is what I understand, yes, that those are transcriptions that Mr. Ross, or Florer or Hight, or one of them, McBroom—

Q And that they had been checked by your office, or by Mr. Purnell's office for correctness?

A Yes, those that we had. Mr. Purnell had some that we checked. Now, I don't know about these, to say whether these are the same ones or not.

MR. SEARLS: Now, have you those time cards for those three employees?

MR. PURNELL: I haven't yet found Brown's.

Q (BY MR. SEARLS) Well, I will show you, Mr. Donosky, a card headed "Time report"?

A Yes, sir.

Q Is that one of your time cards?

A That is correct.

Q Filled out and kept by a Mr. Snodgrass, who is one of your employees?

A Yes, sir, Mr. Snodgrass filled that time out himself, and he is required, by reason of this law, to fill in a time card each week and, we

had so much trouble in getting them to do that, that we had to require they had to hand the time cards in before they got their paycheck.

Q Now, I show you another batch of those, Mr. Donosky. Will you pick out Mr. Snodgrass' time card for the weeks ending April 17, 1939?

A April 17, 1939? Yes, sir, I have it here.

Q Will you put that to one side, please?

A Yes, sir.

Q April 29, 1940?

A April 29, 1940? Yes, sir, here it is.

Q And for November 11, 1940?

A November 11, 1940. Yes, sir, there it is.

Q Now, I show you another group of time cards?

A All right, sir.

Q Is this second group the time cards kept by Mr. Clifton B. Mills one of your employees?

A That is my understanding, he is supposed to, each one is supposed to turn in his own card.

Q Now, then, these are the cards you requested to be turned in?

A These are the cards we required, I am sure, on account of the law, to turn them into their correct payroll clerk.

Q Well, will you pick out for Mr. Mills, please, the cards for the weeks ending February 27, 1939?

A Yes, sir.

Q February 26, 1940?

A Yes, sir.

Q And November 11, 1940?

A November 11, 1940. Yes, sir, there it is.

Q Now, these three cards are your records, or the records kept by you of the time of Mr. Snodgrass, are they not, for these three weeks?

A Those are the records, I presume those are the cards that are turned into our payroll clerk, who is required to see that the time card is

turned in for those employees who might probably be presumed to be under the law.

MR. SEARLS: I will offer these, Your Honor, these three cards, they will be marked as one exhibit.

(At this time the instrument above referred to consisting of three cards, designated "Time report to A. H. Belo Corporation by Walter Snodgrass," was marked by the reporter "Plaintiff's Exhibit No. 9".)

MR. SEARLS: These are three cards for Mr. Mills?

A That is right.

MR. SEARLS: I will offer these, Your Honor.

(At this time the instrument above referred to consisting of three cards, designated "Time report to A. H. Belo Corporation by C. B. Mills" was marked by the reporter "Plaintiff's Exhibit No. 10".)

THE COURT: I believe I will recess, you may have a few moments, gentlemen, and take up this other matter, if you don't mind.

RECESS

Q (BY MR. SEARLS) Mr. Donosky, I show you a third group of time cards?

A Yes, sir.

Q Will you please read to the court the name of the employees?

A Olin S. Brown.

Q O-l-e-n (spelling)?

A O-l-i-n (spelling), it looks like here, O-l-i-n (spelling), S. Brown.

Q And those are for what weeks?

A For the weeks October 2, 1939, October 9, 1939, August 12, 1940, August 19, 1940, November 4, 1940, November 11, 1940.

Q Mr. Brown is an employee at the radio station, is he?

A That is correct, he is an operator at the Radio station.

MR. SEARLS: I will offer these, Your Honor.

(At this time the instrument above referred to consisting of six cards, and being designated "Time Report to A. H. Belo Corporation by Olin S. Brown", was marked by the reporter "Plaintiff's Exhibit No. 11".)

Q (BY MR. SEARLS) These time cards, Mr. Donosky, were the records which the company kept to comply with the record keeping requirements of the Fair Labor Standards Act?

A These are the time cards that the men turned in to comply with the law, that is correct.

Q And they are kept by you, preserved by your company?

A They are preserved by the company, that is correct.

Q Now, all the time cards turned in by your employees are similar in form, are they not, to those which have been put in evidence?

A That is correct, yes, sir.

Q I show you, Mr. Donosky, three cancelled checks. Will you tell the court what those are, please?

A Check dated November 12, W. W. Snodgrass, $18.90.

Q October 12, what year?

A November 12, 1940. Check, April 30, 1940, W. W. Snodgrass, $19.80. April 18, 1939, W. W. Snodgrass, $19.80.

Q Those are the pay checks of Mr. Snodgrass for three weeks, are they not?

A They are, sir, unless there was some other checks issued in addition to these.

Q And they represent payment for the work done during the week ending in each case the day preceding the date of the check?

A That is what they are supposed to be, yes, sir.

Q Now, I show you three more. Will you please also tell the court what those are?

A Check dated February 28, 1939, Clifton B. Mills, $33.70. February 27, 1940, Clifton B. Mills, $38.18. November 12, 1940, Cliffton B. Mills, $41.22.

Q I will show you a third group of checks, will you please describe those, Mr. Donosky?

A Check dated October 2, I guess it is, 1939, $43.05, in favor of Olin S. Brown. October 10, 1939, Olin S. Brown, $53.74. August 13, Olin S. Brown, $44.55.

THE COURT: August 13?

A August 13, 1940.

THE COURT: How much?

A $44.55. August 20, 1940, $55.20. November 5, 1940, $43.05. November 12, 1940, $44.78. These are WFAA payroll account checks. The others were the Dallas News.

Q (BY MR SEARLS) Now, I notice, Mr. Donosky, that the first two groups of checks, those of Mr. Snodgrass and Mr. Mills, are drawn on the Texas Bank & Trust Company?

A Yes, sir, that is where the payroll account for the Dallas News employees is kept.

Q The News. And the WFAA payroll account is in the Mercantile National Bank at Dallas?

A That is correct.

Q And all your payroll checks at the News are made out in the same general form as these specimen checks for Snodgrass and Mills?

A Except checks for certain department heads, the officers, they are carried in another account.

Q Yes. And all your WFAA checks are made in the same general form as these to Mr. Brown?

A I presume they are, yes, sir. In fact, I don't see those checks very often, WFAA, but that is the general form, I am pretty sure.

Q And the form of the checks has not been changed since October 24, 1938?

A I couldn't tell you, I don't think they have been, but I don't have much to do with that.

MR. SEARLS: I will offer these, Your Honor. These are the checks described by Mr. Donosky.

(At this time the instrument above referred to, consisting of twelve checks, heretofore described in the testimony, was marked by the reporter, "Plaintiff's Exhibit No. 12".)

Q (BY MR. SEARLS) Those checks represent, then, Mr. Donosky, the payment in each case for the preceding week, less deduction for social security?

A Less deduction for social security tax. They might have bought a meal ticket up in the lunch room, we have that convenience for our employees. There might have been a deduction for life insurance, in addition to the insurance which the company pays for, the employees have the right to pay for an additional amount. That is deducted from the pay check if they want it, deductions for that, and then—well, I don't know. One or two other items of the same nature.

Q One or two other items of deduction?

A One or two other items of deduction of the same nature, where the employee wants us, for a matter of convenience, to handle payments for him.

Q I will show you these four sheets of paper, Mr. Donosky. Will you please describe those for the record?

A These are the payroll ledger sheets of William Walter Snodgrass, starting with May, 1938, running on through to February 4, 1940; Clifton Benjamin Mills, running from September 12, 1939, down to June 18, 1940; Olin S. Brown, running from April 25, 1939 down to December

something 1940, down to August 27, 1940, that is what it is.

Q Now, I will show you in this one for Clifton Benjamin Mills, there is a column "Old Balance," and another column "New Balance"?

A That is correct.

Q Will you tell us what those represent, please?

A These are cumulative figures, the "old balance", they start January 1 of the year, and show cumulative figures here so that at the end of the year, we have to furnish him the amount he is paid, if he wants to keep a record, or if he wishes, for income tax purposes, the figures are readily available there, or if at any time of the year a matter comes up about the man, the figure is readily available, particularly for income tax purposes.

Q And those two—

A And social security, I might add this, for social security and unemployment and old age pension tax, which we have to keep records on, report and make payments to the government and so on.

Q Those two columns headed "Balances" are a running account of his salary?

A Salary.

Q Salary for the year?

A For the year, for the purposes mentioned.

MR. SEARLS: Do you want to withdraw these, Mr. Purnell?

MR. PURNELL: I think we might arrange later, after everything is in, to see what should be withdrawn and copy substituted. I do not think we need to do it at this time.

(At this time the instrument above referred to, consisting of four sheets, designated "Ledger Sheets" was marked by the reporter, "Plaintiff's Exhibit No. 13".)

Q (BY MR. SEARLS) I will show you in this group of letters addressed to the employees

which has been put in evidence, bearing the date October 22, 1938, and addressed to Mr. Clifton B. Mills?

A Yes, sir.

Q Now, having in mind, Mr. Donosky, that that copy is typed up on the 1939, rather than the 1938 form?

A Yes, sir.

Q With that exception, that is the letter that was addressed to Mr. Mills and acknowledged by him, isn't it?

A I presume so, yes, sir. I can't remember all the—

MR. PURNELL: Those have been checked, Mr. Donosky, with the originals?

A If they have been checked, it is it.

Q (BY MR. SEARLS) In the fourth line from the bottom of the first page, there is a figure of sixty-three cents?

A Yes, sir.

Q And in the last line of the letter proper, on the second page, is a figure of $37.50. Now, you got the figure of 63¢ by dividing the $37.50 by sixty, didn't you?

A Well, I don't know whether that is exactly the figure, or somewhere around that, I think.

Q That was the general method you used?

A Somewhere around that. We got the basic hourly rate that we wanted to make an agreement with him on, and still keep on paying him a weekly wage guaranty.

Q But speaking generally, the cents per hour figure was arrived at by dividing the weekly wage by a figure, which in most cases was sixty?

A Well, yes, sir, we took into consideration, though a lot of factors, time off for sickness.

Q Please just answer the question, Mr. Donosky?

A Well, somewhere in that neighborhood, depending upon the circumstances, a lot of the folks,

we got them on up, anybody that was below the minimum, office boys, janitors, or anybody else that might be below the minimum, we raised them on up above the minimum of 30¢ an hour for the first forty hours of work per week.

Q You used the same method, did you not, in arriving at the per hour figure for the employees in the radio station?

A I think they used the same basis up there.

Q Now, when these letters were signed in October, 1938, did you make any change in the working hours of your plant?

A We did in some cases, yes, sir.

Q In what departments?

A Oh, in practically every department. Some of the boys, the youngsters there, we raised them up to the—we raised them up to the minimum of thirty cents, some office boys might have been making ten dollars a week, we raised him up to thirty cents an hour minimum. Well, the janitors, the hours might have been changed, or the wages raised or some of the other folks were increased to where they were getting well above the minimum.

Q I think you misunderstood the question, Mr. Donosky, I was asking you about hours, not pay.

A Oh. About hours? In some of the cases the hours were changed, too.

Q But, generally, your men at that time were working forty-eight hours, weren't they?

A Well, we have a peculiar organization, each department head was—ran his own department pretty well, except generally nobody worked more—no one was authorized to work more than forty-eight hours a week down there.

Q And the women?

A And the women-folks in some departments, the women were working forty-two hours in some departments forty-three, and some de-

partments forty-five, in some they were working forty, so that caused a little confusion. So, we changed it, put it up to the women folks as to just what they wanted to do around there, let them elect their arrangement that they wanted, and they elected an arrangement of five days of eight hours per day, one day of four hours per week, with the conditions as they prevailed about receiving overtime. Generally, that was the arrangement they accepted, and when they were off sick, they would not—no deductions would be made from their wages. When they wanted to go up and attend to some business, personally, or somebody died in their family, or something of that sort, wherever, we would continue the practice of paying them for those absences, where they would get a regular weekly wage guaranty every week, and that was the way after the law went into effect, that this incident came up.

Q Now, I started out asking, Mr. Donosky, about the conditions before the law went into effect?

A About conditions before the law—

Q Now, as to hours only?

A Well, as to hours only, as I say, it was sort of a departmental proposition, except that nobody was authorized to work longer than forty-eight hours in any department per week, or those were the instructions, that they should not work longer than that.

If occasion required, a story broke where a man had to work on, or they had a storm, and a down-pour, or rain, and bridges were washed away and the circulation department folks had to work unusual hours, and so forth, why, they went ahead and worked those hours.

Q What you have been saying about hours does not apply, does it, to the departments which are covered by union contracts?

A It does not. Those departments covered

by union contracts, the union contracts provide the terms and specifications, they call for five shifts a week.

Q Now, Mr. Donosky, will you tell us what your duties as treasurer of the company are?

A Well, they are rather varied. The usual duties of a treasurer, to handle bank accounts and so forth. I handle the News print as well and the contractural details with regard to news print. I handle the negotiations with the unions and the matter of our labor contracts, and charges; most anything that comes up that they want me to take on.

Q Well, in substance, you are the business manager of the company?

A No, we have a business manager.

Q Who is that?

A Mr. Buchanan.

Q But you are his superior ?

A No, he does not report to me, we have various—as Mr. Richards said, or someone said the other day, we have a very informal organization down there. Mr. Dealey is the chairman—

Q How long have you been connected with A. H. Belo Corporation?

A This time I have been with, I came back October, 1933; I was with the News once before, about six years, and I left in 1928, started in 1922 and I came back in 1933.

Q Now, in what capacities have you been connected with them?

A In what capacities?

Q Yes.

A I was a clerk in the circulation department, and then I was statistician around there for awhile and when I came back I came back as assistant treasurer, assistant secretary-treasurer, and was later elected treasurer about a year ago.

Q Now, we have some transcriptions here

Mr. Donosky, as to an employee named Charles M. Wilson?

A Yes, sir.

Q What department does he work in?

A Charley works in the circulation department.

Q And do you know what his duties are?

A I know generally. Charley was handling the records, and there was a man who handled the traffic schedule of circulation, routing of papers to different towns by bus, truck, baggage or whatnot, and how many papers to each place, and so forth, and Charley was assisting him, and that party died here about a year ago, and Charley has since taken over those duties. Mr. Scott died about a year ago. He was sick about two or three years.

Q Do you have another employee named O. L. Bagwell?

A Yes, sir.

Q What department is he in?

A He is a night watchman.

Q And I suppose his duties are the general ones of a night-watchman?

A Generally, go around and check the clock every hour and the building and keep an eye on things, that is about all.

Q You have an employee by the name of Byron Bates?

A Yes, sir.

Q In what department?

A Byron Bates, I think, is a classified advertising collector, if I am not mistaken. Now, he was a copy boy around there for awhile, a copy chaser, as they called him.

Q What does he do in the classified?

A I think that is where he is located now, as classified advertising collector; a party will phone and want to run a classified ad in the News, and say, "Charge it to me;" or a real estate

man who has just a small volume of classified charged to me, and those boys go around and make collections, they have regular territory where they go out and make collections, the next day or two or three days afterwards.

Q Does he take the ad when it comes in, over the phone?

A No, I don't think he is in that department; I may have him mixed up with someone; I think he is a classified collector, they call them petty ledger; he was a copy chaser, and would run up yonder to Sanger Brothers and get copy of advertisement, when it was ready, or Titche Goettingers, or take proofs back.

Q Mr. J. L. Brewer?

A He is a bookkeeper.

Q In the general office?

A Yes, sir, he handles the bookkeeping on one of them, handles the account for the circulation department, the agents at Athens and Corsicana, we ship them our papers every day and then at the end of the month we render a bill against them, and he keeps the record of all of that, billing and seeing that the collections come in on the—

Q You had formerly an employee named Roosevelt Burleson?

A Yes, sir.

Q In what department did he work?

A Well, he was a janitor around there, or a paper handler, I don't know whether he was a janitor or a paper handler, or both.

Q He is listed, I believe, Mr. Donosky, as a paper handler?

A Is that it?

Q Yes. He is not employed now?

A No, he left about a week or so, or several weeks ago. We had a lot of trouble with Roosevelt over a period, and they had to finally let him

go. They are awfully lenient down there, but finally had to let him go.

Q What are the duties of the paper handler?

A The paper handler, those rolls of paper come in from the mill, come in by freight car, and they are unloaded down at the station. Sometimes these darkies go down to help unload a car of paper. Usually they don't. Usually they have others who are employed to help unload them out of the truck, but these darkies work down in the basement. The paper is rolled down in the basement and stacked, and when they have to furnish it for the press room, they have to help strip the rolls or keep them stripped in advance of the time the press room needs the paper.

Q That is, they keep the paper moving up to the point where it goes to the press room?

A Up to the point where it goes on the hoist.

Q Where it is hoisted up to be put on the press. Did you have an employee named Roy Conkle?

A Yes, sir.

Q In what department does he work?

A Well, he works in the mailing room.

Q And what are his duties?

A The papers come off of the press, and the presses are running and the papers go up in this conveyor, and those boys in the mailing room wrap the papers into bundles or into single sheets—or into singles, as they call them; they have the address stamped on there, on a little slip, and it shows the name and address of the parties who the paper goes to, or they tie them up into bundles to be sent out in the towns.

Q And they either wrap the papers for mailing, and to the individual subscribers, or wrap them in bundles for dealers?

A Either for individual subscribers or they are in bundles of a hundred, and some bundles are less, and some a little more, and the papers are

carried by truck from our building and spotted on various corners throughout the city and in this area, where the carrier boys pick the papers up about five o'clock in the morning, or so, and delivers it behind the door, or somewhere thereabouts.

Q Now, in the case of those papers that are sent out by mail, Mr. Donosky, you have a postal sub-station in your building, do you?

A Yes, sir, the government sends a man down to check the weights of the papers that go out by mail.

Q And do these mail room employees like Mr. Conkle, do they deliver these papers that go by mail to that station, that sub-station?

A No, here is what they do: They just weigh in there and our truck takes the papers down to the post office. This man merely checks the weight of the paper, and our own truck gets the paper down there, because they are moving pretty fast to make schedule.

Q And when you say "This man", you mean the postman?

A Yes, sir, the postman.

Q You are not referring to Conkle?

A No, sir, Conkle is our employee there that works wrapping bundles, and such work as that.

Q You have an employee named Harrill Eastus?

A Yes, sir.

Q What department is he in?

A Harrill works down in our storeroom, that is, the supplies. He keeps the stationery and supplies, the different forms, pencils, ink and so forth, and the requisitions are sent down to the basement and Harrill fills them and brings them upstairs, and then Harrill does a little extra work there, too. We have some salvage paper around there, white—good white paper, but it cannot run

on the press, because a certain amount we lose there. So, that paper is cut into smaller sizes that are sold to a party here in town and Harrill works extra on that, and makes extra money doing that, occasionally. He also works occasionally on Saturday nights in the mailing room, making some extra money.

Q Now, you have also an employee named Nathan Fair. He is a paper handler, too?

A Nathan Fair. He is either—yes, he was a paper handler, too. There is another one, Burnett Fair, I think he is running the elevator.

Q Nathan Fair's duties, then, were the same as Roosevelt Burleson?

A That is right.

Q Do you know an employee by the name of G. B. Geiser?

A Yes, sir.

Q What department is he in?

A In the stereotype.

Q That is a unionized department?

A He is working under a union contract, that is right.

Q Do you have an employee by the name of Joe A. Greely, do you?

A Yes, sir.

Q In what department is he?

A He drives the elevator at night. We have a colored person who drives the elevator in the day and at night, he comes on and helps watch around when the night watchman has to be making his rounds. He kind of sits around and watches the lobby.

Q Do you have an employee named J. Grover Jones?

A Yes.

Q In what department?

A He is a press man working under a contract with the pressmen's Union.

Q Who is in charge of the press room?

A Well, the man who is in charge of the press room, his name is Frank Fox. Frank has been incapacitated now for about three years, he had a stroke, and he comes down, at his own insistence, and spends two or three hours a day down there, but he is still in charge. Nobody else has been appointed. We appointed an assistant around there to do the work, but Frank is still the man in charge.

Q Do you have an employee named E. F. Julian?

A Yes, sir.

Q In what department?

A He is a stereotype man; he works in the stereotype.

Q That is another union—

A That is another union contract employee.

Q All of us, Mr. Donosky, may not be so familiar with the term stereotyper, will you tell us what they do?

A Well, the news stories or the advertising goes into the composing room, and that is where the type is set up, either by hand or on machines up there, and then it is made up in the form, the ads and stories and everything. That form goes, then, into the stereotype room where it is made into a metal plate, or into mats first, and then into metal plates and those metal plates, that is the stereotype room. The stereotyper makes the metal plates and they go down in the press room, and are placed on the cylinder of the press.

Q This metal plate is a curved plate?

A That is right, it is a curved plate, that is right.

Q You have another employee named J. E. Lockhart, have you not?

A Yes, sir.

Q In what department is he employed?

A He is a bookkeeper.

Q Does he work on any particular type of work?

A I don't know. Jimmie works on classified advertising accounts and records, those that have regular monthly charge accounts, I think, and then he probably does general bookkeeping work.

Q Who is the head bookkeeper?

A Mr. Taggart is the auditor, and then his chief assistant, he has two of them, Mr. Gentry and Mr.—well, two or three of them. Well, Gentry is the next man in charge.

Q Do you have an employee named D. W. Martin?

A D. W. Martin? Yes, sir.

Q In what department?

A He was an office boy until here about a year or so ago, and then he was promoted to a mailing job, getting the mail from around the building, and stamping it, and weighing it, and so forth. I am not talking about the newspapers, but I am talking about the ordinary correspondence.

Q The ordinary outgoing mail?

A The ordinary outgoing mail, taking it to the post office, but he got his call to the army, however, here about a month or so ago, and he is in the army.

Q Did he also help distribute the incoming mail?

A I think he did bring it down to the building, he would get it at the post office on these calls, and bring it to the building, and turn it over to the ladies there that divide it up to the different departments.

Q Do you have an employee named B. C. Monroe?

A Yes, sir.

Q In what department?

A He is in the power department.

Q What are his duties?

A Well, those duties down there, you know,

they have all their electrical apparatus down there that ties into the city electricity.

Q Well, the machinery that keeps those presses going?

A The machinery that keeps the power—

Q Going?

A The machinery that keeps the power going; and their duties are mainly to watch that machinery, oil it when it needs oiling and such as that type.

Q Who is the foreman in charge of that department?

A Frank Guillot.

Q You have an employee named J. A. Moore?

A Yes, sir.

Q In what department?

A He is a stereotyper, working under the stereotype contract.

Q Doing the same duties as these others?

A As Geiser and Julian you mentioned.

Q And working under a union contract?

A And working under a union contract, that is correct.

Q Do you have an employee named Bernice Vickers?

A Yes, sir.

Q In what department?

A She is a stenographer in the circulation department.

Q Doing general stenographic work?

A Yes, sir, principally secretary to the city manager, Mr. K. A. Ward.

Q You have another employee named Early Walker?

A Yes, sir, Early Walker. He is a janitor.

Q And Richard West?

A Richard West was one of our writers. He was a reporter, and then was a writer, assisting Mr. Schoffelmayar, who is our agricultural

editor, and he got—he just left us to go with the Associated Press.

Q But he was with you until about how recently?

A Oh, about two or three months ago.

Q The Dallas News has advertised, hasn't it, Mr. Donosky, during the last two or three years, in the Editor & Publisher?

A Yes, sir.

Q What is the Editor & Publisher?

A That is a trade journal for newspapers, a trade magazine.

Q Now, the advertisements that the Dallas News publishes, or sends to the Editor & Publisher, are prepared where?

A Prepared here in Dallas.

Q I mean, in the Dallas News office?

A They are prepared at our office, or by an advertising agency man on the outside who prepares it and sends it on in, and gets a commission on that.

Q Now, have you seen those advertisements that have been published?

A Well, I haven't noticed any particular one, I have seen them.

Q Well, you saw them as they came along?

A Yes, sir, I have seen them after they were published.

Q I will show you these three sheets, Mr. Donosky, and ask you to tell me if those represent advertisements of the nature that we have been discussing?

A Yes, sir, it is, yes, sir; yes, sir, those are—

MR. SEARLS: I will offer these, Your Honor.

(At this time the instrument above referred to consisting of three sheets of photostats from Editor & Publisher, were marked by the reporter, "Plaintiff's Exhibit No. 14".)

Q (BY MR. SEARLS) Now, your book-

keepers, Mr. Donosky, sometimes have occasion to work on Sundays, do they not?

A Yes, sir, we have, I think, one or two of them, and also other clerks, I presume you are having reference to the work they do on Sunday, checking the classified ads, for which they receive extra payments. The Classified advertising section on Sunday is so much larger than it is week days, so week days we will have two pages, and probably Sundays we will have six or seven or eight pages, and they just come down and do that on Sunday. There are four of them, and they receive extra pay for it.

Q They are paid $2.50?

A I think they are paid $2.50, just a flat figure; if they get through in an hour, it is okay; if it takes two hours, okay, it is just a flat figure. They are anxious to make that extra money.

Q I show you another paper headed The Retail News?

A Yes, sir.

Q Is that something that the A. H. Belo Corporation puts out?

A It is news. I don't know whether we are still putting it out or not. We did put it out for a long time. It is just a merchandising—it isn't something that we sell, it is just given away. It is just news about different products that are advertised in the Dallas News, that are sent out to the advertiser, and people who handle the products.

Q That is sent to the people who advertise in the papers?

A It goes to them, and to the people selling these products around town, merchants and so forth, just something, as a little something we give the advertiser for nothing.

Q Just a little good will?

A That is all, yes, sir.

MR. SEARLS: I offer this.

MR. PURNELL: May I see that?

MR. SEARLS: Certainly.

MR. PURNELL: Are you going to offer the whole paper?

MR. SEARLS: Yes.

MR. PURNELL: We haven't seen this before. I suppose it may be stipulated we will have an opportunity to object, after we have had an opportunity to read this?

MR. SEARLS: Yes, if I may offer it now, and then you can examine it, perhaps, during the noon recess.

MR. PURNELL: Yes.

(At this time the instrument above referred to, consisting of three sheets, and designated The Retail News, was marked by the reporter, "Plaintiff's Exhibit No. 15".)

Q (BY MR. SEARLS) Did the News pay, during this past fall, something extra to some of its employees for working on the election returns?

A Oh, they get paid for that. You see, the election returns are handled by the Texas Election Bureau, which is just a cooperative organization that is supported by all the newspapers. It is just a means by which they can get election returns promptly and efficiently, but it is done, the work is done down at the Dallas News, and they employ a number of people from among our own force, and from all over town, from the other newspapers, and from other businesses, to come down and work on the election returns, and they are paid for that work by the Texas Election Bureau, and the expense is pro-rated among all the newspapers.

Q Well, do the payments to those employees appear on your records?

A No, it should have been paid—wait a minute, there are some elections where we will pay some of our employees, now, the local elec-

tions, that the Texas Election Bureau is not interested in, but a local election, some of our employees will come down and work. Some of the Dallas Herald and some of the Dallas Journal, and each one of the newspapers pays its own employees, but the general election, that is handled by the Texas Election Bureau.

Q Did you have an employee at the News named Charles Prasifka?

A Yes, sir.

Q In what department does he work?

A Well, Charley works, oh, he is sort of the timekeeper and payroll keeper for the mechanical department.

Q That name is P-r-a-s—(spelling)—

A P-r-a-s-i-f-i-k-a (spelling), something like that. Prasifka.

Q You say he was sort of a bookkeeper for the mechanical department?

A That is right, for the mechanical, for the mechanical department, he is a bookkeeper, through whom is assembled the data and matters of the other payroll clerks.

Q When you say the mechanical department, you are referring, are you not, to those departments working under union contracts?

A That is those working under the union contracts, the press room, the stereotype room and composing room.

Q Is Mr. Prasifka, to your knowledge, a member of any of those unions?

A Not to my knowledge, he is not, no, sir. You see, he is not a journeyman in any one of those trades, he is just bookkeeping there for the mechanical supervisor.

Q For you?

A That is right, for the company there, but he reports to the mechanical superintendent.

Q Did he sign a letter on October 22, 1938?

A I presume he did. Now, I am not positive, but I presume he did, Mr. Searls.

Q Will you, when you have an opportunity, search and see if you can find such a letter?

A Yes, sir, I will do that.

Q Now, you will be available later on, I suppose, if you are wanted again?

A Oh, I imagine I will be around here for awhile.

MR. SEARLS: You may inquire.

MR. PURNELL: Yes, he will be available.

MR. SEARLS: You may inquire.

CROSS-EXAMINATION

BY MR. PURNELL:

MR. PURNELL: Your Honor please, it is 12:30.

THE COURT: Well, we will work until about 1:00 o'clock or sometime this side of it.

Q (BY MR. PURNELL) Mr. Donosky, with reference to the practices and principles of the News, as to its employees, prior to October 24, 1938, before the act went into effect, will you state what the practice was as to annual vacations?

A With respect to the departments that are not working under union contracts, where every detail and every term is stipulated, the practice was that each department, each employee that had been there for a year, would receive two weeks vacation, although no promise was ever made to the employee to that effect when he was employed.

Q Did he receive full pay during the vacation period?

A Yes, sir.

Q Now, is that a long standing practice with the News?

A It has been, as long as I can remember.

Q And is it true as to WFAA?

A Yes, sir.

Q Now, will you state what the practice is,

with respect to time off for illness or personal affairs?

A Those employees are not docked for any absences on those counts, they are taken care of. Some are out for months at a time, and they have received their full time, and some have been out for years, that are still receiving their full pay. We have numerous cases of that kind.

Q You mentioned on direct examination, I believe, the superintendent of the mailing room?

A No, he is the press room foreman. He was made press room foreman here a few years ago, and he had a stroke, and he was out altogether for a year or so, but he comes down for two or three hours.

Q He is covered by union contract?

A No—well, the foreman, he is covered up to a certain point, up to a certain fixed wage, but beyond that, why, the office does what it wants to, and the foreman usually gets what the contract—they do at our plant, more than what the contract provides for.

Q What was your practice with respect to superannuated employees, whose abilities to do a full days work were impaired? Did you keep people on the payroll or not?

A Yes, sir, we have many of them on the payroll, Mr. Purnell.

Q Do you have memoranda from which you can tell us how many such persons there are now, and what amount is paid to them?

A Mr. Purnell, I prepared something the other day at your request on that point, and you probably have it there, or I have got a copy of it in mine.

MR. SEARLS: Your Honor, may I inquire as to the relevancy of this particular testimony?

MR. PURNELL: If Your Honor please, there isn't going to be much of this, just enough to complete the picture of the News Employment prac-

tices. The injunction suit is very general in its challenge; there is not specified in what respect the government claims we are violating the law, except in the statutory language appearing in Section 7; it is alleged we are not paying full time and a half overtime.

In our answer, we say that we assume that the complaint is the same complaint that is mentioned in our suit for the declaratory judgment, but there is no specification of the particulars that the government is relying on anywhere. So, we deem it appropriate to go a little further than merely the precise issue of what employee now gets for what hours of work, in order to complete the picture.

MR. SEARLS: If Your Honor please, if I understand correctly, they mean by superannuated employees those who now perform only nominal duties on account of long service and infirmity, and I think I may say that we do not claim any violations in regard to such employees.

THE COURT: Well, he says we are about through with this.

Q (BY MR. PURNELL) It is short. Will you state how many employees there are of that character, superannuated at the present time?

A Yes, sir, twenty-eight.

Q Will you state what pay was paid to those employees during the last year?

A $64,636.00.

Q Will you state, Mr. Donosky, how many employees of the Dallas News, exclusive of department managers and executives are employed, we will say, at a basic rate of more than forty cents; we will say between forty cents and fifty cents per hour.

MR. SEARLS: I pray Your Honor's judgment.

THE COURT: All right.

MR. SEARLS: He said employed at basic

rate of so much. That is one of the questions that we have to determine here, whether they are employed at that rate, or some other rate.

MR. PURNELL: Well, I will reframe the question.

THE COURT: All right.

Q (BY MR. PURNELL) I will say employed under contracts, letter contracts of the type that have been mentioned in the evidence, specifying basic rates of between thirty cents and forty cents per hour?

A Of between thirty cents and forty cents per hour, on the News fifty, and WFAA, six. That is exclusive of department managers or officers. There are fifty-six in that class.

Q Now, between forty cents and fifty cents?

A There are sixty-one, fifty-eight and three. This will exclude all department managers or officers.

Q Now, between sixty cents and seventy cents?

A Do you want fifty and sixty?

Q Fifty and sixty?

A That is forty-four.

Q Between sixty and seventy?

A Forty.

Q Between seventy and eighty?

A Forty-four.

Q Between eighty and ninety?

A Eighty-one.

Q Between ninety cents and one dollar?

A Eighteen.

Q Above a dollar?

A One hundred fifty-four.

Q Now, filling the other brackets between thirty and forty cents an hour?

A Between thirty and forty? You called for that.

Q Did you give me between thirty and forty?

A That is fifty-six, fifty and six.

Q Now, what did you—

A You didn't call for the ones, the first bracket, the men on thirty cents up to forty.

Q All right, how many at the minimum?

A I beg your pardon, it is thirty-one to forty cents, that was the fifty-six. Then the minimum of thirty cents per hour, we have seventy-four.

Q And that is a total of approximately how many?

A A total of 572 that receive the minimum of thirty cents or above.

Q Now, with reference to your employment practices at the time the act went into effect, will you state what your practice was with respect to payments of bonus at periodic intervals?

A Well, when the company could afford it, it would give something extra to the employees around Christmas time, but every Christmas, as far as I can remember back there, they got at least five dollars; five dollars was the usual figure for folks around there, and in 1939, the employees received the equivalent of one week's salary. That was Christmas, 1939. Around Christmas, 1940, they were given two percent of the earnings for the year, with a minimum for those that hadn't been there but a short time, of five dollars. I think that was the minimum, but two percent of the year's earnings.

Q Now, did you pay on a regular salary basis prior to the Act?

A Yes, sir.

Q Did those salaries vary with respect to each employee, according to the usefulness of that employee to the business?

A That is correct.

Q And his time with the organization and the character of the work he did?

A Yes, sir.

Q Was that a weekly salary, or—

A A weekly salary was generally the case.

Q Paid weekly?

A Yes, sir.

Q Will you state whether you had any opportunity to ascertain the desires of the employees as to changing those employment practices and arrangements when the act went into effect?

A Oh, yes, sir; any number of them had talked to me about the thing, when they had learned they were going to be required to fill out time cards, and hold their hours down, and so forth, that they complained about to me they didn't want it at all. They were too well satisfied and too well treated around there. They didn't want any restrictions placed on them; that we had given them time off for all these things, sickness and other things, and they didn't want any change in that practice, and didn't want to report any time. They wanted—

Q What was their attitude with respect to receiving a uniform weekly amount in preference to a fluctuating amount each week?

A Their mental attitude was—they were happy over the fact that they would receive a regular weekly amount, regular weekly amount.

Q Was the desire in that respect expressed to representatives of the corporation at and before the time the Act went into effect?

A Yes, sir.

Q Do your employees maintain an employee association of any kind?

A Yes, sir, they have what is known as The Round Table; that is all of the employees, union and non-union, sort of a social organization.

Q And do they publish a paper of any kind?

A They publish a little paper called "Sparks."

Q Is that paper published wholly by them, and free of any control?

A Wholly by them and free of any cost of materials or printing or anything of that sort.

Q Does what is said in that paper represent the free expression of the employees?

A It certainly does.

MR. SEARLS: I pray Your Honor's judgment, and ask that that be stricken.

MR. PURNELL: Well, I will ask—

THE COURT: Well, of course, the expression of employees could not change any laws, as far as that is concerned, but I suspect all of this testimony is on the general subject of the defendant's theory that he thought the law was after sweat shops and not after places where employees were already happy in their relationship, and I recognize what counsel has said. I think it ought to go into the record to take care of that. All right.

Q (BY MR. PURNELL) Do you have any issue, or excerpt from an issue of "Sparks" there?

A Yes, sir, I have one here.

Q Or available to you?

A I have one in my papers over there, Mr. Purnell.

Q Where did you say it is?

A Excuse me.

MR. PURNELL: May we have permission, Your Honor?

THE COURT: Sure.

A May I go over and get it?

THE COURT: Sure.

Q (BY MR. PURNELL) Will you identify the issue of "Sparks" which you have in your hand?

A January 28, 1941.

MR. PURNELL: We offer this in evidence, as indicating the character of the publication.

MR. SEARLS: You are offering all of this, Mr. Purnell?

MR. PURNELL: Yes.

MR. SEARLS: I have no objection, Your Honor.

(At this time the instrument above referred to, consisting of one sheet, and designated "Sparks", was marked by the reporter "Defendant's Exhibit No. 1".)

Q (BY MR. PURNELL) Now, will you state whether legal advice was sought prior to the coming into effect of the act, as to how your employment practices might be made to conform to the Act?

A Yes, sir, we did seek legal advice from Mr. Locke.

Q Was there, or not, desire to retain as many of the advantages of your prior practice as possible?

A It was.

MR. SEARLS: I pray Your Honor's judgment. I do not think he should lead his own witness.

THE COURT: Well, I doubt if this gentleman can be led very much. I have been watching him, and I think it is all right, it hurries along. Mr. Locke has already testified.

MR. SEARLS: Is what they desired material, Your Honor?

THE COURT: Well, it is leading, there is no doubt about that, but I do not see it is objectionable. We frequently allow leading questions, unless there is something to indicate the witness can be led into the expression of something he does not believe to be true. All right.

Q (BY MR. PURNELL) What you did with respect to your employment arrangements has already, in part, been shown in the evidence. Was that in conformity with the legal advice that the executives of the News received?

A Yes, sir.

MR. SEARLS: I am sorry, Mr. Purnell, I didn't understand that question.

MR. PURNELL: I asked him if what they did conformed with the legal advice they received.

MR. SEARLS: I thought you mentioned Mr. Duke's name?

MR. PURNELL: No, what they did.

Q (BY MR. PURNELL) Will you state briefly the essence of what was done? Some of it has been covered, but there are probably portions that have not been. What was done in order to conform your employment arrangements to the Act, as you understood it?

A Well, we had tried to plan how we—in consulting with Mr. Locke, how we could continue to pay our employees a regular weekly amount, so that they would not fluctuate, working one week, being paid one week say fifteen dollars or twenty dollars, whatever the amount is, and the next week thirty dollars, fifty dollars and seventy-five dollars; where we could pay them a regular amount each week, we knew they were happy with that arrangement; every advantage was the advantage of the employee, not the advantage of the Dallas News. Every advantage was to the advantage of the employee to continue paying them a regular weekly amount; and as I told Mr. Street and Mr. Duke on occasions, the Dallas News pays good salaries.

MR. SEARLS: I Pray Your Honor's Judgment, but aren't we getting a little far from the question?

THE COURT: Yes, that is rather stumbling a little now.

MR. SEARLS: Rather an argument in testimony, Your Honor, I think.

THE COURT: Yes.

Q (BY MR. PURNELL) Confine yourself to the question of what they did, and you will get forward a little faster. I understand they did cause an employment agreement to be signed?

A They did cause an employment agreement, per that letter that was prepared with the advice of counsel, and was approved.

Q Now, was that agreement signed voluntarily by each employee?

MR. SEARLS: I pray Your Honor's judgment. I do not see how he can know that.

Q (BY MR. PURNELL) All right. Was any effort made on the part of the management to club any employee—

A No, sir.

Q —into signing it, the agreement?

A No, sir; when we had the department heads in to discuss the thing, when we got through with the attorneys and this letter printed, we called the employees—department heads—in to discuss the entire matter; we gave each one a batch, and made it distinctly clear to each one of them that there shall be no persuasion or no coercion of any kind; if the employee wanted to sign it, okay; if they didn't, okay, that they could sign them of their own free will and accord.

Q Now, did each of those letters specify a basic rate, or a regular rate of pay for the hours up to the legal maximum, the first forty hours in the current year?

A It specified for the first year that the basic rate of pay per hour would govern for the first forty-four hours, beyond that time, time and a half, plus a certain amount that would add up to the guaranteed amount; and then for the second year, it would be reduced to forty hours, thirty cents minimum, and the third year to forty hours.

Q Now, did that basic rate of pay vary as to the respective employees?

A Yes, sir.

Q Did it vary in accordance with the same considerations which caused your wage or salary

rates to vary prior to the coming into effect of the act?

A Yes, sir.

MR. SEARLS: I pray Your Honor's judgment.

THE COURT: Well, it is pretty leading.

MR. SEARLS: I was not objecting to the form, Your Honor, but it is a pretty vague question.

THE COURT: I think I understand it. What he is trying to show the court here, as I conceive it, in many instances, I will not say all, but nearly all instances, the employees were already getting more than the minimum salary.

MR. SEARLS: Yes.

THE COURT: And in order to adjust themselves, to make it on a weekly basis, to try to comply with the law, they figured out an optional divisor, which they returned into this larger wage, in order to give an hourly pay. Now, that is what he is trying to show the court, I think.

MR. SEARLS: If that is what he is after, it is not objectionable.

A Yes.

THE COURT: Can't we get at it—

MR. SEARLS: We are willing to admit, in fact, I can, and I ask Mr. Donosky myself, if the basic rate sent out did not vary in about the same way as the weekly rate did.

THE COURT: I think we ought to be able to show that, because that is the point in this case, and get it fair and square before the court, so that, if anybody wants to appeal afterwards, there will be no uncertainty as to what the question is, or what the facts are.

MR. PURNELL: That is what I am trying to get at now, Your Honor.

Q (BY MR. PURNELL) Now, did you compute the effect that would result from dividing

what had theretofore been the weekly wage, the weekly salary, by the factor sixty?

A In some cases, yes, and in some, no. We made a number of adjustments around.

Q Now, was the factor sixty used in some or in numerous cases?

A Yes, it was used, yes, sir.

Q Now, what was the effect of using that factor?

A The effect of using that factor was that if at any time an employee would work no more the first year, I think fifty-four and a half or fifty-five hours, something like that, on that basis, his guaranteed weekly amount would be sufficient to take care of regular time at the stated rate, at the hour, plus time and a half overtime; and the next year it went down slightly, about fifty-three and a half hours, something of that kind, which in many cases, and in most cases that will work, the figure.

Q Does that mean when the factor sixty was used, that the minimum guaranteed weekly amount was sufficient to cover forty hours at the basic rate, and thirteen, roughly, hours of overtime?

A Yes, sir.

Q At not less than one and one-half times the basic rate?

A That is right, plus—yes, sir, that is right.

Q And does it mean that when more than fifty-three, we will say, hours were worked, something in addition to the minimum guaranteed weekly amount was owing?

A That is correct, yes, sir.

Q Now, will you state whether in each instance, so far as you know, and I will except a possible mistake—well, I will ask the question this way: Whether it was your practice and the part of your plan of wage payment, to pay an added amount to the minimum guaranty weekly

rates, when the amount of overtime was such as to require at the one and one-half times the basic rate, some added payments to your minimum weekly guaranty rate?

A Yes, sir, it was, and here is something else that we did. We paid them over, we tried to, except these union contracts, and they are self-governing. Well, they have got to lay off the time equal to what they are supposed to, in accordance with union rules, and whether or not they might work extra time, but our schedule of hours continued in some cases as they were before, and in some cases, they were reduced, but in no case was the schedule of hours increased. But, in addition to the payment of possible overtime, if an employee—say that the schedule of hours for a certain department was forty-five hours a week, and an employee worked fifty-two hours in that week, because of some unusual incident, some catastrophe or something that required a full seven days around there, if he worked up to fifty-two hours, he got his regular wage there, but he was given time off the next week, or as soon thereafter as possible, for the difference between the regular schedule of hours and the time that he worked; and if he worked in excess of whatever the figure is, on the basis of the regular time, forty hours, and time and a half, if he worked in excess of the amount he received on his salary check there, then he would get a check in addition, to being given the time off during the next week, or as soon thereafter as possible.

Q All right, to make that a little plainer, what was the usual working schedule in the department that Mr. Finklea, we will say, was in?

A I think those folks usually work around forty-five hours a week, now, I am not positive, except the women folks, and they were working up there, the women folks, some working forty,

some forty-two and forty-five and they got them all on a regular schedule.

Q Is that the city news department?

A That is the city news department.

Q Now, that was before the act, about forty-five hours a week?

A No, before the act, I think they were working forty-eight hours a week, I believe was their schedule.

Q All right. Was their regular schedule of work reduced then, when the act came into effect?

A I think it was, I am not positive about that, but I think it was reduced in that department.

Q Now, do you recall Mr. Finklea's basic rate of pay?

A No, I do not, Mr. Purnell.

Q Well, if Mr. Finklea worked forty-eight hours a week, we will say three hours above the regular schedule?

A Uh-huh.

Q Was he paid an amount which was equal to the basic rate of pay, as fixed by his contract, multiplied by forty, plus an amount at least equal to one and one-half times such basic rate for the five hours above forty?

A Oh, yes; yes, sir.

Q And for whatever hours above forty he would work?

A Whatever above, yes, sir, that is right, above forty.

Q Now, suppose he worked forty-eight hours, three hours above forty-five, was he allowed in addition to the time and a half pay, some time off?

A Yes, sir, because he was—his managing editor, Mr. Withers, or Mr. Barrett, whoever it is there, of course, if Finklea had to work more than the other employees did, on the schedule, and he didn't want Finklea to have to work more than the others, that was his regular schedule,

despite the fact he was paid fully the regular time plus time and a half above, and he was allowed to get off the next week, or told to the next week, or as soon thereafter as possible, for that extra time, and that, also, despite the fact that Mr. Finklea might be sick the previous week for two or three days, or Mr. Finklea might have had some sickness in his family and was off, and no deduction was made from his pay check on that amount.

Q All right, now, if Mr. Finklea, in any week, should work, we will say, fifty-five hours, so that the minimum guaranteed weekly amount was not sufficient to pay him full time and a half for the hours above forty, what was done with reference to Mr. Finklea?

MR. SEARLS: I pray Your Honor's judgment, unless Mr. Donosky knows, or if the records of this employee are here, how could he possibly testify to that?

THE COURT: Well, I think he is rather illustrating, rather than trying to show what Mr. Finklea was actually paid, it is part of your theory, is it not?

MR. PURNELL: Yes, and I am trying to develop the picture.

MR. SEARLS: I think that should be for the records, they should speak—

THE COURT: Yes, that is correct; if you find what he is illustrating now, or seeking to illustrate, is not supported by the record, of course, the theory would fall. I imagine that these so-called assumptions are based on what you conceive the record to be, Mr. Purnell?

MR. PURNELL: Yes, sir, they are based on the record.

THE COURT: That is right. You would not assume a state of facts.

Q (BY MR. PURNELL) Now, is that in accordance with your usual practice?

A Yes, sir.

Q What would be done as to Mr. Finklea in those circumstances?

A That is what would have been done, that is right.

Q And what is that?

A What I just stated there about if he had worked forty-eight hours, and his schedule was forty-five, I don't know whether that is his schedule or not and, Mr. Withers or Mr. Barrett would say, "Now, you have worked more than the scheduled hours, you lay off next week for these hours."

Q Suppose he worked more than fifty-three hours?

A Then he should be paid, he was supposed to have been paid some for that time above fifty-three hours, but he would still get his time off between the schedule and the fifty-three hours, and as I say, despite the fact that he might have been off two or three days the week before, on account of sickness or something of that sort, and received his full week's wages, or full week's pay there.

THE COURT: Well, those favors, however, depended upon the persepecuity and kindness of the one that was above him?

A Judge, that was the regular practice at the institution, everybody that was not covered by union contract, they are paid when they are off sick or when they have to attend to personal business, or somebody dies in their family, something of that sort.

THE COURT: Yes, I understand that.

A They got their pay, no deductions are made; it is a policy there out of the goodness of the heart of Mr. Dealey and the management there, that those practices are followed, and the employees, that is why they are so happy down there, they are so well treated down there. I am an employee myself, and have been and am; I

know how the other employees are. I get around them all the time.

Q (BY MR. PURNELL) You have a schedule which will show the number of employees of the News who have been with it more than twenty-one years?

A Yes, sir.

Q Will you briefly give us the contents—

THE COURT: I believe that is a pretty good place to stop, we will take a recess.

(At this time an adjournment was taken from 1:00 o'clock P.M. to 2:30 o'clock P.M., at which time the following proceedings were had:)

THE COURT: All right, gentlemen, if you are ready.

Q (BY MR. PURNELL) Mr. Donosky, you testified with reference to the varying rates of pay applicable to the various employees?

A Yes, sir.

Q Do you have with you a schedule on that subject, that breaks those rates down among the various departments?

A Yes, sir, I do.

Q Is the schedule which you present to me accurately prepared and correct?

A Just as accurate as humanly possible.

MR. PURNELL: We would like to offer this schedule in evidence, it is a little bit more in detail than the others on this subject.

MR. SEARLS: What is this second sheet? No. objection.

Q (BY MR. PURNELL) There are two sheets, Mr. Donosky; the long sheet relates, I believe, to the newspaper employees?

A That is right.

Q And the short sheet to the WFAA employees?

A That is correct.

MR. PURNELL: We offer the schedules in evidence.

(At this time the instrument above referred to, consisting of two sheets and being designated Basic Hourly rates and Guaranteed Weekly Earnings, was marked by the reporter, "Defendant's Exhibit No. 2".).

Q (BY MR. PURNELL) Now, do you have a memorandum there of the length of service of the various groups of employees of the newspaper and WFAA?

A Yes, sir; I have the total here, Mr. Purnell, and I have the breakdown of them down at the office, but the totals I can give you.

Q If you will, just give us the totals?

A Employees that have been here three years, but not less than five, are eightysix in number.

Q That is three years, but not more than five?

A Three years, but—yes, not more than five. Eighty-six in number. Then from five to ten years, one hundred eighteen in number. From ten to fifteen years, it is eighty-five in number. From fifteen to twenty years, it is seventy, and over twenty years, one hundred even, making a total of 459 out of approximately five hundred, fifty regular employees.

Q That means that only about one hundred employees have been with the News less than three years?

A About ninety-one, yes, sir, about ninety to one hundred, yes, sir, that is correct.

Q Now, will you state what changes as to hours was made after the act came into effect, and incident to the coming into effect of the act?

A Yes, sir, there were a number of changes made around there, some of the employees had their weekly—had their hourly rates increased and their weekly figures increased; some depart-

ments, some places they had the hours reduced, for instance, in our general circulation department, those folks that had a schedule of forty-eight hours a week, except for the summertime, when they would get off a half a day in the summer, four hours, and then after the law went into effect, that was reduced to forty-four hours a week. Practically most of them are women employees in there, doing clerical work, and there are several men in there too, but I think they get the same hours, but that is the general practice in that department, the change that was made.

In the reportorial, these men have been cut down from forty-eight hours, to various times, as conditions would warrant, from forty-eight down to forty-five, and I think now most of them are working forty-two hours a week.

Q That is the reportorial department?

A Yes, sir, the reporters and news men up there. We had other changes around the office where the hours were—I think the night watchman—his hours were reduced and things of that sort, I cannot recall exactly.

Q All right. Now, you described the practice with respect to paying wages each week, based on the basic rate of pay specified in the contract, plus at least one and one-half times that rate of pay for all hours in excess of forty hours this year.

MR. SEARLS: I pray Your Honor's judgment; doesn't what they pay appear better from the record?

MR. PURNELL: I am asking now—

THE COURT: Of course, it does not foreclose him on any oral testimony, because the record might hurry along a little bit, which I wish to do, of course, but I believe I will hear the story of both sides, and move along as much as we can. We seem to be going over somewhat the same ground.

Q (BY MR. PURNELL) Now, have you had occasion during this last week, while this checking of wages and hours was going on, in preparation for this trial, did you check to confirm, or to dis-affirm the regularity of payment in accordance with the practice that you have testified about?

A Yes, sir, the checking of these computation sheets that was prepared by the wages and hours folks, the checking of those computation sheets was under my supervision, and I had a chance to go over them with our payroll man, to see if they are correct or not.

Q Now, will you state whether, as a result of that checking, there came to your attention any instance when payment was made of less than was duly entitled, based on the basic hourly wage, and on at least one and one-half overtime above forty hours?

A Yes, I ran across two of them, this Roosevelt Burleson, one week there he got $17.50; that was about two dollars and fifty cents, or two dollars and twenty cents overtime, where he should have gotten $17.95, or, I think, $17.85 to be exact, there was a thirty-five cent discrepancy in there; and the other case—

Q All right, you found one discrepancy, and that was with respect to Roosevelt Bureson?

A That is right.

Q When thirty-five cents should have been paid him for overtime, and was not actually paid him?

A Yes, sir, that is right.

Q Was there any other?

A There was another case came to light during that checking, that was Tom Simmons, during the week of the Athenia disaster, he worked quite a number of hours overtime there above fifty-three, although he got them off, and there was nothing down there, I don't know why;

he should have gotten paid for about two or three hours in the computation, except for the fact this might be true, I forget the details of the thing, Tom Simmons is more or less a supervisory employee down there; he is in charge of the telegraph desk.

Q Now, except as to Roosevelt Burleson, in one instance, and except as to Tom Simmons in one instance, the week of the Athenia disaster, has any other instance come to light as a result of this checking, indicating a failure to pay at least time and a half on all hours worked above forty hours, basing the time and a half on the regular rate of pay specified in the contract with the particular employee?

A It has not come to my attention, if it is so, Mr. Purnell.

MR. SEARLS: I object to it, Your Honor.

THE COURT: Overrule the objection.

MR. SEARLS: May I call Your Honor's attention, those agreements do not speak of regular rate, but basic rate.

THE COURT: All right.

Q (BY MR. PURNELL) Now, do you have with you schedules showing the number of hours allowed for sickness and vacations, as to the particular list of employees selected by the wage and hour division for treatment in their special wage computation sheets?

A Yes, sir, I have.

Q Will you explain what that list shows?

A Yes, sir, the wage and hour division takes a certain group of employees, that they said were representative of the situation, and picked one week in each month since the law went into effect, and showed the number of hours from the time cards, and the weekly payments to those people from the payroll records, and they just have that one week.

Now, we have taken those same employees,

and have shown exceptional conditions in other weeks during that period of time, where these employees were off, for instance Roosevelt Burleson was off three days here in one week, one day in another, six days in another. He had two weeks off for vacation with pay, sick five days, sick six days, sick six days. That is his situation with regard to Roosevelt Burleson. And the rest of them, some more pronounced than that in here, but these are the exceptions to it.

Q Now, is this memorandum that you refer to, correctly and accurately prepared?

A Yes, sir, so far as we could accurately, humanly possible to do so, there, why we just went through and got the cards for the rest of the time during the period of these particular employees, to show some of the—what happened during some of the other weeks.

MR. PURNELL: We offer this memorandum in evidence as supplemental to the wage computation sheets.

A That is the Dallas News employees; and here are the WFAA employees, and it is prepared somewhat differently, but the story is told just the same.

MR. SEARLS: Have you got a copy of this for us?

THE COURT: What time do these last two schedules cover? What time?

A They cover, Judge, from the time the law went into effect. It went through all the weeks of that time.

MR. PURNELL: Do you have a copy of it.

A I have a copy of one of them in my papers there. Do you want me to get them now, or later?

MR. SEARLS: Later will be all right.

A I will get it later, I have it in my papers.

MR. SEARLS: Is this the same thing?

MR. PURNELL: The same thing.

MR. SEARLS: Does that show the bonus? I did not notice it.

MR. PURNELL: Now, the first schedule, consisting of several pages, is marked "Exhibit D-3".

(At this time the instrument above referred to, consisting of ten pages, and designated as an explanation for time off of employees, was marked by the reporter, "Defendant's Exhibit No. 3".)

MR. PURNELL: Then the second schedule, only one page, is as to only WFAA employees, and marked as "Exhibit D-4".

(At this time the instrument above referred to consisting of one page, and designated as WFAA employees, sick absences was marked by the reporter "Defendant's Exhibit No. 4".)

Q (BY MR. PURNELL) Now, I hand you, Mr. Donosky, the wage computation sheets, which have been placed in evidence as to a group of employees of the news paper operations?

A Yes, sir.

Q Merely for purposes of illustration to see the character of information on those sheets, will you find the sheet for Roosevelt Burleson?

A Yes, sir, I have it.

Q Now, will you look on the sheet, in the week ending October 28, 1940, and state how many hours were worked as shown by the sheet of that week?

A Fifty-four hours.

Q Will you state what the compensation was?

A It was eighteen dollars ($18.30) thirty cents.

Q Now, will you state what the regular rate of pay was at that time with Roosevelt Burleson, as specified in the wage contract?

MR. SEARLS: I pray Your Honor's judgment.

THE COURT: Well, I don't see anything wrong in him telling what he found, that is their theory.

MR. SEARLS: But the regular rate of pay, Your Honor, is one of the issues which we have to decide in this.

THE COURT: Of course, but we have to hear his theory, as well as yours.

MR. PURNELL: I said in the contract, as specified in the wage contract, in order to avoid it.

MR. SEARLS: If you will say "basic rate of pay", I have no objection.

THE COURT: Well, we cannot confine one to the word "basic", I don't find that in some other places. I want to get this suit, and I cannot get it by cutting out stuff; it is all in there, and it is the easiest way to make a record, and they have a right to put it in now, but I want to see what it is.

Q (BY MR. PURNELL) Was he at thirty cents an hour?

A He was one of the paper handlers making thirty cents an hour, basic rate, plus time and a half, for above the forty hours. At that time, 1940, he should have gotten forty times thirty, twelve dollars. For the other fourteen hours, he should have gotten fourteen times forty-five, four and a half, a dollar eighty-six cents. He should have gotten $18.30, and that is what he received.

Q All right, now, let's take Robert Mountique. Will you find his page? Oh, by the way, before we leave Roosevelt Burleson, here is a week where he worked forty hours. Will you state what he received in that week?

A He received $15.00 that week.

Q That is the week of February 26, 1939?

A That is right.

Q Now, go to Robert Mountique?

A There it is.

Q One more question before we leave Roosevelt Burleson. What was the guaranteed minimum weekly pay to which he was entitled by the terms of the employment contract?

A It was fifteen dollars during that period.

Q Then overtime of $3.30 was paid in the week?

A Yes, sir.

Q That we have examined?

A That is correct.

Q Now, Robert Mountique?

A Robert Mountique. Here it is.

Q What was his basic rate of pay, as specified in the employment contract?

A $15.00 a week, guaranteed, thirty cents per hour basic rate.

Q I find here the week of December 2, 1940. Will you state how many hours he worked in that week?

A Fifty-four hours.

Q Will you state the compensation he received?

A $18.30.

Q And I believe you have already computed that that is at the rate of forty-five cents per hour above forty hours?

A Above the first forty hours, that is correct.

Q Will you go to Leonard Brewer?

A Here he is. J. L. Brewer.

Q Will you look at the week of January 9, 1939?

A Yes, sir.

Q And state how many hours Mr. Brewer worked in that week?

A Sixty-three hours, January 9, 1939.

Q Now, I refer you to his wage contract, dated October 22, 1938, and will ask you what

the basic rate of pay was as specified in that contract?

A Thirty-four cents an hour for the first forty-four hours during that period.

Q Now, will you make a computation to see what, under the terms of this Leonard Brewer should have received in the week of—

A January 9.

Q —January 9, 1939?

A For the first forty hours, thirty-four cents an hour.

Q That is forty-four hours?

A The first forty-four hours during that period, that is correct; $14.96, and sixty-three hours, that is nineteen hours at time and a half, it would be nineteen times fifty-one, $9.69 more, it would be $24.65.

Q Now, will you state what Mr. Brewer received for total pay in that week?

A He received $32.50, he received one check of $20.00, and two and a half, and ten, that is $32.50 that he received.

Q Now, do you happen to know that Mr. Brewer is one of these bookkeepers who did Sunday morning work?

A Yes, sir, he is.

Q And that the $2.50 check was for that work?

A That was for that work, that is correct, and then there was just that special job, and the rest was overtime, that he had to work, if somebody was sick, and he probably put in a lot of overtime, and got paid for it.

Q Now, is the character of checking you have just exhibited, the character of checking that has been done, as to all these employees, that the wage and hour division has selected?

A That is the character of checking, except he did not go into the union employees' contract, and I believe you and Mr. Richards have agreed

you would not fool with them, because they are covered by union contracts, and are something else.

Q And the result of that checking is to disclose the two instances you have already referred to?

A That is correct.

Q Now, I hand you a similar wage computation sheet, as to employees of WFAA?

A Yes, sir.

Q And will you refer to the sheet as to J. L. Wicker, please?

A J. L. Wicker, All right. I have it here.

Q Will you refer to the week ending March 15, 1939?

A March 15, 1939. Yes, sir, fifty-nine hours.

Q He worked fifty-nine hours?

A Fifty-nine hours, and received $47,29.

Q Now, can you say, without going to the trouble of checking again, that 71¢ was the basic rate at that time?

A I would have to check with his letter there. Mr. Purnell.

MR. SEARLS: I do not think, Mr. Purnell, we have any letters.

MR. DUKE: It is the radio station.

MR. SEARLS: Oh, the radio station?

MR. PURNELL: Yes, it is the radio station.

Q (BY MR. PURNELL) I hand you employment contract, and ask whether you can state from that, that seventy-one cents was the basic wage?

A Yes, sir, I can state that seventy-one cents is the basic hourly rate.

Q Yes, sir. Now, will you make the computation to ascertain what Mr. Wicker should have received?

A It was fifty-nine hours total, wasn't it?

Q Yes.

A For the first forty-four hours, at that

time, he should have gotten forty-four times seventy-one, thirty one dollars ($31.24) twenty-four cents; for the next fifteen hours, he should have gotten fifteen times $1.06½ cents, to be exact, it would be $15.97½ cents, it would be $47.21. He was paid $47.29.

Q Is that difference attributable to the fact that he was given the benefit of the odd half cent on the overtime?

A That is right, that is what it makes out there.

Q Now, is that the character of checking that has been done as to WFAA employees?

A Yes, sir, that is the character of checking that has been done.

THE COURT: I would like to ask you a question here, however, if you made a compilation on the government's theory, on what Wicker should have had?

A No, we didn't, Judge. The government was making all those compilations or computations.

THE COURT: Do you know whether the government's computations differ from those?

A No, sir, I don't. I don't know that.

THE COURT: All right.

Q (BY MR. PURNELL) Do you know what the government's theory is?

A No, sir, I never did get it.

Q Sufficiently to make any computation?

A No, sir; no, sir.

Q If the government says that the computation should be made on a basis of some average total earnings, divided by average hours worked, do you know what period the government seeks to use for that computation?

A No, sir, I don't.

THE COURT: All right.

MR. PURNELL: We turn the witness over now, but I suppose it is understood that other

issues may develop, and testimony may develop, and this witness may be available to be recalled?

MR. SEARLS: Yes.

RE-DIRECT-EXAMINATION

BY MR. SEARLS:

Q Mr. Donosky, you spoke this morning of a schedule of hours for the different departments?

A I said different schedules, yes, sir.

Q Have you a printed or written schedule that is in effect for the different departments at the present time?

A No, sir, we have not. The only place that we have that is in the mechanical departments, as I say they are covered by union contracts, where everything is detailed and specified, but the other departments, I don't remember, they are around the building.

Q Now, in the case of Roosevelt Burleson and Robert Mountique those are both paper handlers, are they?

A. Yes, sir, both colored paper handlers.

Q I will show you the sheet again for Roosevelt Burleson?

A Yes, sir.

Q He was paid before the Act went into effect at what rate?

A I don't know, I will have to look it up.

Q I mean, don't those sheets—

A It doesn't show—yes, it does, too, yes, it does, back here in August, 1938, paid $15.00 a week, that is right.

Q That was for a six day week?

A For forty-eight hours, apparently.

Q Well, he worked eight hours a day, six days a week, is that correct?

A I presume so.

Q And Robert Mountique was paid on the same basis?

A Yes, sir, he was a paper handler, that was dealt with the same way, without dealing with these sheets, I know it was.

Q The weeks when he was paid $17.50 before the Act, he worked an extra day?

A Yes, sir, they would go out and help handle a car of paper, something of that sort, that is right, or some other one was sick down there, and they had to call on him to work, both of them got paid during those weeks.

Q And this $2.50 that was called to your attention, in the case of Mr. Brewer, was the regular payment made to each of the bookkeepers for Sunday work?

A Those that come down and do that checking of the classified ad prices on Sundays, that is correct.

MR. SEARLS: That is all for the present.

THE COURT: All right, call your next witness.

MARTIN B. CAMPBELL

Being first duly sworn, examined in chief by Mr. Searls, testified as follows:

Q What is your full name?

A Martin B. Campbell.

Q You are connected with Radio Station WFAA?

A That is correct, sir.

Q In what capacity?

A Managing director.

Q What kind of programs does that station put on, Mr. Campbell, I mean,—

THE COURT: Can't we stipulate it? I just don't like to take so much time, they have got—

MR. SEARLS: I might say at this point—

THE COURT: —a station, radio station, fifty thousand watts, and goes all over the coun-

try, I imagine. Can't that go in the record? That is what you want, isn't it?

MR. SEARLS: We have one stipulation as to some of those facts, which I will offer now.

THE COURT: All right.

(At this time the instrument above referred to, and designated Stipulation, was marked by the Reporter, "plaintiff's Exhibit No. 16".)

MR. SEARLS: Now, I am going to offer also, Mr. Purnell, this second stipulation.

MR. PURNELL: That is all right.

(At this time the instrument above referred to, and designated as stipulation, was marked by the Reporter, "Plaintiff's Exhibit No. 17".)

Q (BY MR. SEARLS) Mr. Campbell, will you please tell us the departments into which the employees of WFAA are divided?

A Technical, program, one sub-division is music, and continuity; and business office.

Q I will ask you about some of the employees, Mr. James Alderman. What work does he do?

A He is an announcer, handling especially news, news broadcaster and announcer.

Q Does he write up any news before he broadcasts?

A No, sir, only in emergency. Well, regularly, I believe maybe he does do one or two news reports a week now, not as a regular thing.

Q Charles D. Armentrout?

A A bookkeeper.

Q He is the only bookkeeper?

A He has an assistant.

Q And he keeps all the books?

A Records of the—

Q Station?

A —Station, yes, sir.

Q Velma Boyce?

A My secretary, secretary to the managing director.

Q Olin Brown?

A Operator, control room operator, Technical Department.

Q Can you explain just what he does?

A We were discussing that this morning; I don't know whether I can or not. He has charge of technical equipment that feeds the programs from the studios to the transmitter. There are some mixing panels and things of that sort.

Q Mary Louise Crowdus, what does she do?

A She is a secretary.

Q General secretarial work, or is she a secretary?

A I believe she is with Mr. Keese.

Q Mr. Keese?

A K-e-e-s-e (spelling).

Q What is his position?

A He is manager of the station.

Q Teddy P. DeHay?

A Traffic, he has charge of the receiving of the program information and scheduling of the programs in the program book.

Q That is fitting the programs into the time that you have?

A Keeping a record of it, that is correct, yes, sir.

Q William C. Ellis, is his work generally similar to Mr. Browns?

A Yes, plus the fact that he has charge of the receiving and handling the transcriptions.

Q What are these transcriptions?

A Transcriptions are records that we receive, recordings made especially for broadcasting, we receive from various sources for use on the station.

Q And when you say he has charge of handling them, just what does he do?

A Well, he has charge of receiving them,

he receives them, makes a card index file on them, tests them, checks them.

Q To see how long they will run?

A To see if they are ready, yes, sir, checks the time on the recordings.

Q Cecil I. Hartzell?

A An announcer.

Q Arthur C. Kuehn?

A Kuehn, librarian.

Q What is he?

A He has charge—

Q What does he do?

A He has charge of the library, musical library, card indexes, and clearing of programs, clearing of music.

Q Eudell Martin, what does he do?

A Well, he is on the night desk, he is in charge at night, or rather, at the reception desk at night on the telephone. He was formerly in the bookkeeping department.

Q Does he do something known as veritype?

A He did temporarily, some few months ago. Veritype is simply a typewriting which is used on the facsimile machine.

Q Was that in connection with your experimental radio edition—

A That is correct, yes, sir.

Q Of news you put out for awhile?

A That is correct, yes, sir.

Q Eugene Stanley, Martin, what is he?

A He is the news processor. He receives the news as it comes in over the wires, and re-writes it for presentation on the radio.

Q Does it come in over the wire direct to station?

A It comes in on a printer service, yes, sir, directly to the station.

Q James Orville Raines?

A Raines was at one time office boy, and later was the veritype operator, and the editor

of the facsimile. He is no longer with the station, with the News, I mean.

Q T. W. Sharpe?

A Control operator.

Q The same as Mr. Brown?

A That is right.

Q W. Hal Thompson?

A An announcer, also assistant program director.

Q J. L. Wicker?

A Control operator, the same as Brown.

Q Mr. Campbell, will you look those over? You have read them, have you?

A These? Yes.

Q Yes. I will ask you particularly about these last two items, on the second page, beginning with Mr. Campbell, those are not signed, to Mr.—do you know from whom—to whom those names were addressed?

A No, sir, I don't remember, I am familiar with the memoranda of this sort. I have gotten them from the various people at the News, Mr. Collins and myself, and this particular one.

Q Which one are you referring to?

A These two, the last two items on the second page.

Q Do you recall whether you received that memo?

A I don't recall that I did, very likely I did, because some of the questions answered here are questions that came up.

Q I understand that you have tried to locate the originals of these memoranda, and have not been successful?

A I believe that is true.

MR. PURNELL: Yes, we looked for those and couldn't find them. As I understand, they were found attached to the contracts, according to Mr. Richards, but they were not attached to the contract, when those contracts were taken

from our files, and nobody has been able to find those.

MR. SEARLS: I will offer these.

(At this time the instrument above referred to, consisting of two pages, and containing copies of memoranda, was marked by the reporter, "Plaintiff's Exhibit 18".)

MR. PURNELL: I am not going to object to the offering of them, but I assume they will be treated in the light of the testimony of Mr. Campbell, that he does not remember those particular letters, although they read somewhat familiar to him, are of the character of others he received, and I assume they will be passed upon in the proper light.

MR. SEARLS: I assume he had that, as to the last two.

MR. PURNELL: Oh, whatever the evidence is.

Q (BY MR. SEARLS) Mr. Campbell, when you say you received letters perhaps like this, but you don't remember them, you are referring, are you, or are you, to the last two or so of them?

A I am not sure whether that is addressed to Mr. Calhoun, or rather addressed by Mr. Calhoun to various members of the staff, passing through my hands or not. However, I have seen various memoranda on this general subject, I mean as to identifying specifically one as against the other, I cannot do that.

Q Do you say that you do not recall any of those specifically?

A No, sir, I do not. Now, with the exception of this last one, I do recall having seen that.

Q That is the last one on the second page, to the one addressed to me, the new wages and hours.

MR. SEARLS: I offer that.

(At this time the instrument above referred to, consisting of two pages, was heretofore marked by the Reporter as "Plaintiff's Exhibit 18" on page 116 of this record)

MR. SEARLS: You may inquire.

CROSS EXAMINATION

BY MR. PURNELL:

Q Mr. Campbell, there is one question I wish to ask; it relates to a matter that is covered by the stipulation, as to the interstate commerce character of WFAA. The stipulation says that WFAA is heard beyond the state. I assume that is true?

A Yes, sir.

Q Now, I want to ask whether the commercial coverage of WFAA, that is to say, the area which WFAA covers, as represented to advertisers in selling radio time to advertisers, whether that commercial area goes beyond the state line?

A It goes into the Southern Counties of Oklahoma, and what is known as the primary coverage area.

Q The southern counties of Oklahoma?

A Yes, sir.

Q Beyond that, does it go beyond the state line?

A I do not recall just where the line is; I think so. I think perhaps southwestern Arkansas, a few counties, and a few in northwestern Louisiana, comes within the primary coverage, area. However, the bulk, that is, a small part of the primary coverage, which is based in Texas, I should say, guessing and guessing only, with a fair knowledge of the coverage area that ten percent or less is outside the state.

Q That ninety percent or more of your commercial coverage—

A Primary coverage, yes, sir.

Q —is within the state?
A Yes, sir.
MR. PURNELL: That is all.
THE COURT: All right, call your next witness.

H. C. WITHERS

Being first duly sworn, examined in chief by Mr. Searls, testified as follows:

Q Your full name is H. C. Withers?
A Yes, sir.
Q And how long have you been connected with the Dallas News?
A Since 1904.
Q In what capacities, Mr. Withers?
A Well, in various capacities; at present as managing editor. I have served as reporter, sports editor and city editor.
Q I want to ask you some questions about the various departments of that paper, and their operations. Do you have a department in which the editorials are written?
A Yes, sir.
Q Who is in charge of that?
A Dr. J. J. Taylor is editor in chief, and Mr. Ruggles is the executive editor in charge of the—
Q Mister who?
A Mr. W. B. Ruggles.
Q And how many employees are there in that department?
A I would have to guess at that, since I have no jurisdiction in that department, I would say perhaps fifteen or twenty.
Q Your immediate department is the News Department, is it?
A Yes, sir.

Q And what type of employees work in that department?

A Reporters, copy readers, artists, photographers, editors, desk men; I mean by editors.

Q Is that what is known as re-write men?

A We have some re-write men, and using the term "editors," I mean men who edit the copy.

Q Now, do you have a department there known as the morgue?

A Yes, sir, that is on that floor, too.

Q What is that?

A That is a place where we file pictures and cuts and biographies.

Q For future use?

A Yes, sir.

Q And how many employees there?

A There are three.

Q Does Miss Moffett work there?

A Miss Moffett, yes.

Q Is there an advertising department?

A There is an advertising department, yes.

Q Who is in charge of that?

A Mr. Dave Smith is in charge of the local advertising department, and Mr. Harry Guy in charge of the National Advertising department; Mr. Vaughan is in charge of classified advertising.

Q You have a building maintenance staff, I presume?

A Yes, sir.

Q Who is in charge of them?

A Mr. Robbins, Mr. Hugh Robbins, I think.

Q By that staff, you mean janitors—

A Yes.

Q —elevator operators, watchmen and so forth?

A Yes.

Q Now, the composing room, what is done there?

A They set the type, make up the forms of the paper.

Q The employees there are members of a union, are they?

A The typographical union, yes.

Q The type-setters, in which department do they work?

A In the composing room.

Q Well, what is the difference between them and the other employees in that room?

A Well, they have men who set the type, and they have men who assemble that type, and put it into form, and they have men who read the proof of that type, after it has been set.

Q You have men known as make-up men?

A Yes, they are the men who assemble the type and put it into forms.

Q Now, the linotypers operate linotype machines?

A That is true, yes.

Q And can you give us a little more detail on that?

A I don't know just what you mean, but a piece, a copy or a story is sent up from the news department to the composing room, and they have a member that belongs in the composing room, and is a member of the typographical union, who apportions that copy to operators, who take it and set it on linotype machines.

Q And you have on the staff PBX operators?

A Yes, sir.

Q That is a telephone operator, isn't it?

A Yes.

Q What is this schedule?

A That is a schedule of the press time of our editions.

MR. SEARLS: I will offer this, Mr. Purnell.

(At this time the instrument above referred to, con-

sisting of one page, and designated "Schedules for the Dallas Morning News," was marked by the reporter, "Plaintiff's Exhibit No. 19".)

Q Now, Mr. Withers, looking at that schedule which has just been put in evidence, will you give us more detail about what you have just said?

A Well, the first item on the schedule is the early city edition, which the schedule states that the starting time is 8:27 P.M. That means that the forms leave the composing room at that hour. The last form of the paper; the next item is the first city edition, the last form leaves the composing room at 1:00 A.M.

Q So, in the first column, under early edition, it says, 10-7:50 P.M. What does that mean?

A Well, this schedule is set up for the last ten pages that go into the composing room. For example, no specific time for sending in other pages, that go in before that time, has been set up, but in order for the department, the stereotyping department, to make its schedule in casting these plates, it is necessary for a definite time to be fixed for sending in the form for the last ten pages, and they are numbered from the bottom up, the first of those pages to go in, which is marked No. 10, must go in at 7:50 P.M. The second, which is marked No. 9, must go in at 7:55; the next, the 8th at 8:00; the next at 8:05; the next at 8:10, and so on down the line, and the last page, which is usually page No. 1, goes in at 8:27.

Q In other words, this represents the schedule that your work has to go through the composing room, or the plant, which is it?

A Go out of the composing room into the stereotyping foundry.

Q In order to keep your scheduled publication?

A That is right.

Q The A. H. Belo Corporation ceased publishing the Semi-Weekly Farm News, about December 31, of this last year, didn't it?

A That is true.

Q While that paper was being published in addition to the Morning News, did the employees in the plant work on both papers?

A I couldn't say as to the mechanical departments; in the News department, they were not the same employees, they were different.

Q Well, did any of the telegraphed news that was received, was that used in the Farm News?

A Yes; yes.

Q And that was written up by whom?

A It wasn't written up, they just picked up the type, reduced it, for example, if in the daily paper we had a—

MR. DUKE: Go ahead, Mr. Withers?

A If in the daily paper we had a story that they wanted to use in the Semi-Weekly, but it was too long for their space, they would take the first three or four paragraphs out of it, in some cases they may have re-written it; I had no control or jurisdiction over the Semi-Weekly staff.

Q Who did, Mr. Withers?

A Mr. DeWitt McMurray, and after his death, his son, Ray McMurray.

Q I show you, Mr. Withers, copy of the Dallas Morning News for the issue of August 20, 1940. Take this story here in the right hand column about night raiders pound many British areas, that was received by Associated Press, was it not?

A Yes, sir.

Q The Associated Press maintains an office in the News building?

A Yes, they have a night office there.

Q Now, in what form, what physical form does the News receive the Associated Press stories?

A Well, it is on long sheets of paper that come off of the teletype machines.

Q How does it get into your office?

A It is delivered by a copy boy.

Q And it goes to which department?

A What we call the Universal copy desk.

Q Who works there?

A Well, we had Mr. Simmons, who is in charge of the Universal copy desk; do you want me to name the people?

Q Well, Mr. Simmons works there?

A Yes.

Q Who is in charge of that desk?

A Mr. Simmons.

Q How long has he been in charge of it?

A Oh, slightly more than a year.

Q Well, it goes to the desk where he works, and what is done to it there?

A Well, he either handles it himself, or passes it around to some of the copy readers who are sitting at the desk.

THE COURT: Let me ask you this. I am just jealous about my time. Is there any question here about any interstate commerce?

MR. PURNELL: Your Honor, we take the position, and we are not going to spend much time in presenting it, but we take the position that the News circulation is limited so largely to our state that it is not engaged in interstate commerce in such wise as to come under the coverage of the act.

THE COURT: Why, it goes all over the nation. I have bought it in every big city in the nation; I think it is just taking up the court's time.

MR. PURNELL: Well, we have a stipulation, and our stipulation was designed to cover nearly all of this.

THE COURT: Is there anything else in this,

except taking up time? There isn't another point in it.

MR. SEARLS: So long as coverage, Your Honor, is an issue, and as long as Your Honor stated this morning this case may be appealed.

THE COURT: I don't know.

MR. SEARLS: On the matters covered in the record, I have only in mind asking Mr. Withers about the course that two or three typical items follow through the plant.

THE COURT: All right. You see, I have other cases set, counsel, and you have got some simple issues here, and I think we ought to get down and try them. We have spent nearly the whole day here on formalities, pretty much on formalities.

MR. SEARLS: We will put it through as rapidly as we can, Your Honor.

THE COURT: Yes.

Q (BY MR. SEARLS) Mr. Withers, after that goes to the Associated Press—what did you call it, telegraph—

A Universal desk.

Q They do what to it?

A Well, they edit it, write heads on it, and then send it to the composing room.

Q When you say they edit it, do you mean they cut out part of it?

A Oh, yes.

Q They discard some stories altogether?

A Yes, indeed.

Q And in those that they retain, do they change the wording?

A If it seems desirable.

Q But, in most instances, do they?

A Well, I wouldn't say in most instances they change the wording, but in most instances, they cut out some of the story.

Q Now, where does it go from there?

A It goes to the composing room.

Q And there it is set up into type?

A Yes, sir.

Q And goes from there where?

A After the type is set and assembled, it is sent into the stereotype department, where the plates are cast.

Q And after it is stereotyped, it is ready for the press, is it?

A They send the plates to the press room.

Q Now, taking that same page of the paper, you have here in the upper left hand half of the front page, Associated Press Wire Photo?

A Yes.

Q In what form do those come in?

A They come in as photographs.

Q And are delivered to whom?

A Well, they are delivered to the picture editor.

Q Now, you also receive, do you not, a number of special features, such as columns by Alsop and Kintner?

A Yes, sir.

Q Who receives those?

A Well, most of them come to my desk, and I send them over to the desk of the assistant manager, Mr. Winers, who then sends them over to the Universal desk.

Q Then, after that, they followed the same course as the Associated press?

A They do.

Q How about the comic strips, in what form do they come in?

A They come in in matrix.

Q What are those?

A So-called mats, reproductions of drawings on heavy cardboard paper, just a matrix of the drawing.

Q And they come in. Who receives those?

A Well, they are sent up to my office; the secretary usually sends them over to Mr. Winer.

Q And who is your secretary?

A Mrs. Cranbow.

Q Now, what is the process of reproducing those?

A They are sent to the stereotyping department, who makes lead casts of them.

Q From which the ones we see in the paper are printed?

A That is right.

Q Some of the stories that appear in the morning, some of the local stories are also used by the Associated Press, are they not?

A They are all delivered to the Associated Press, they use a great many of them, I could not say how many.

Q In what form are they delivered to them? In the form of a copy of the paper?

A No, no. Carbon copies of the stories the reporters write.

Q And do you submit to them staff photos?

A Well, not as a rule.

Q Only when requested?

A Only when requested, yes.

Q I show you this booklet, Mr. Withers. Was that put out by the News in 1939?

A I could not say as to the date.

Q I think there appears a story about the paper out at Lufkin. It says as of this time, April 20, 1939?

A That is right.

Q That contains a fair and reasonably complete description of the processes of putting out your paper?

A Yes, I think so, as I recall; it has been sometime since I have read it.

MR. SEARLS: I will offer this, Your Honor.

(At this time the instrument above referred to, being a booklet containing 24 pages and being designated

"Making a Metropolitan Newspaper", was marked by the reporter, "Plaintiff's Exhibit No. 20".)

MR. SEARLS: I also offer, Your Honor, at this time, this copy of the Semi-Weekly Farm News, dated Tuesday, September 24, 1940.

(At this time the instrument above referred to, consisting of two sheets, and designated "The Semi-Weekly Farm News" was marked by the reporter, "Plaintiff's Exhibit No. 21".)

MR. SEARLS: And this copy of the Dallas Morning News, dated Tuesday, August 20, 1940.

(At this time the instrument above referred to, consisting of twenty-four pages, and designated "Sunrise War Edition, The Dallas Morning News," was marked by the reporter, "Plaintiff's Exhibit No. 22".)

MR. SEARLS: You may inquire.
MR. PURNELL: No questions.
THE COURT: Call your next witness.

HARRY D. GUY,

Being first duly sworn, examined in chief by Mr. Searls, testified as follows:

Q Have you been sworn, Mr. Guy?
A Yes, sir, this morning.
Q What is your full name?
A Harry D. Guy.
Q You are connected with the Dallas News in what capacity?
A Director of National Advertising.
Q Is the Dallas News represented in any way by a company called John Woodward, Incorporated?
A John B. Woodward, yes, sir. John B. Woodward, Incorporated.
Q Where are they located?

A They have offices in New York, Chicago, Detroit, San Francisco, and Los Angeles.

Q What is the nature of the business the News does with them?

A They represent us in the National Field, and in the solicitation of national advertising.

Q Does the News receive advertisements from Woodward?

A Through Woodward, not from Woodward, but through Woodward.

Q That is, Woodward gets—

A As our agents.

Q —gets the contract, but the advertising is sent directly to you from the advertiser, is that it?

A Sometimes; sometimes they are sent to Woodward, and Woodward transmits them to us.

Q When you receive an advertisement from an out of state concern, what do you get, physically?

A You mean in the way of printing property?

Q Yes.

A Well, we receive copy in the forms of just printed copy, or typewritten copy; sometimes in the form of a plate or a matrix.

Q Will you tell us what happens to those, when they are received? What is the process they go through?

A Well, they are received in the regular mail in the office; they are sent to the bookkeeping department, the gentlemen in the bookkeeping department who schedules the copy, sees that it appears in the News on the proper date, the proper insertion date, after which the advertisement is charged, and billed to the advertiser.

Q Does that complete the story, until they get them typed or in the form in which they are reproduced?

A Briefly, I think that covers the route of the national copy.

Q You also receive some out of state advertisements, which are not procured for you by the Woodward concern, do you not?

A That is right.

Q One of the employees in your department is Mrs. Helen McCune-Lovell?

A Yes, sir.

Q Tell the court what her duties are?

A Well, Mrs. Lovell's duties primarily are one of miscellaneous clerk, I suppose, wherein she addresses envelops, and direct by mail literature, and during certain seasons of the year, she serves as a reception clerk in the lobby of the building, waiting upon tourists and others seeking information with reference to vacation resorts and automobile routes.

Q That covers it, does it?

A Pretty much, yes, sir.

MR. SEARLS: You may inquire.

MR. PURNELL: No questions.

THE COURT: All right.

MR. SEARLS: Is Mr. Mills here? Is Mr. Brown here?

MR. DYER: Yes, Mr. Brown is here.

OLIN S. BROWN,

Being first duly sworn, examined in chief by Mr. Searls, testified as follows:

Q What is your full name?

A Olin S. Brown.

Q Do you work at Radio Station WFAA?

A Yes, sir.

Q In what department, Mr. Brown?

A In the control room, plant department.

Q Will you tell the court what you do, what your duties are?

A Fundamentally to properly coordinate and

corelate program switching, to monitor and mix locally produced studio shows, that is, to control volume.

Q The volume of the program?

A From the various microphones, the incoming microphones, to balance the volume of those properly.

Q Who is your immediate superior?

A Raymond Collins.

Q How many others work in that department with you?

A On the particular job I have, three are doing the same work.

Q They are whom?

A Bill Ellis and Loran Wicker.

Q What is your hourly rate?

A Eighty-four cents.

Q What?

A Eighty-four cents at present.

MR. SEARLS: You may inquire.

MR. PURNELL: No questions.

W. W. SNODGRASS,

Being first duly sworn, examined in chief by Mr. Searls, testified as follows:

Q What is your full name?

A W. W. Snodgrass.

Q You are employed by the A. H. Belo Corporation?

A I am.

Q In what capacity?

A I am night building man, night watchman. Night watchman.

Q And what did you say before that?

A Night building, or night watchman.

Q Since this time card system was instituted, you have turned in a card every week, have you?

A Yes, sir.

Q Now, remembering back, Mr. Snodgrass, to October of 1939, at that time was there any change in your working hours?

A I don't remember.

Q What did you say?

A I don't think so.

Q Or in last October, 1940, was there any changes?

A No, sir.

Q You will have to speak up a bit?

A No, sir.

Q And was there any change on either of those dates in your pay?

A No, sir, the same as it is now.

Q When you hand in your time card, Mr. Snodgrass, to whom do you give it?

A I give it to the department head.

Q That is who?

A Mr. Robbins in my case.

Q And when do you get your pay check?

A On the same day, at the time I sign the card.

Q That is, you hand in your time card to Mr. Robbins, and you get your pay check from him?

A Yes, sir, or his—one of his representatives.

Q If he is not there?

A He isn't always at the desk.

Q What time is your starting time?

A Our time starts Tuesday and ends Monday night.

Q No, I mean what time of the day do you start?

A Oh, my work time?

Q Yes.

A I start at 6:00 o'clock in the evening.

Q And you quit when?

A 6:00 the next morning.

Q That is for how many days a week?

A I work three nights a week, I work one day in the daytime, on Sunday, I work ten hours on Sunday.

Q Are you on the premises all of the time, from the time you start work until the time you quit?

A Full time, yes, sir.

MR. SEARLS: You may inquire.

CROSS EXAMINATION

BY MR. PURNELL:

Q Mr. Snodgrass, I observe from the employment contract as to you, dated October 22, 1938, that your basic rate of pay by the contract is thirty-four cents per hour, and that you are guaranteed a weekly minimum of $20.00?

A That is right.

Q Is that correct?

A That is correct.

Q Have you ever at any time failed to receive full payment in accordance with that contract?

A I never have.

MR. PURNELL: That is all.

THE COURT: All right.

JOHN WILKINS NEWNAM,

Called on behalf of Street, et al, being first duly sworn, examined in chief by Mr. Searls, testified as follows:

Q What is your name?

A John Wilkins Newnam.

THE COURT: Newman, is it Newman?

A No, sir, Newnam.

Q (BY MR. SEARLS) How do you spell it?

A N-e-w-n-a-m (spelling).

Q And you work for the Dallas News?
A Yes, sir.
Q What are your present duties?
A Classified collector.
Q That is, you collect for Classified advertisements?
A Yes, sir.
Q How long have you been doing that?
A Just about a year.
Q And what did you do before that time?
A Worked on the mail desk, mail clerk.
Q Will you tell us what your duties were at that time?
A Distributing all mail that came in, and handling the mail that was going out.
Q How long have you been employed by the News?
A A little past five years.
Q Since this time card system was started, have you kept a record of your time?
A No, sir, just on the weekly time card.
Q Well, that is what I mean?
A Yes, sir.
Q And you have turned that in each week?
A Yes, sir.
Q You turned that in to whom?
A To the bookkeeping department, where I get my check.
Q What person do you hand it to?
A Mr. Truly.
Q Mister who?
A Mr. Truly.
Q Mr. Truly?
A Yes.
Q When do you turn in your time card?
A Every Tuesday afternoon.
Q And when do you receive your pay check?
A Immediately afterwards.
Q From Mr. Truly?

A Yes, sir, or someone else in the bookkeeping department, if he is absent.

Q Now, at the time you were working on the mail distribution, what time did you start work in the morning?

A Between 7:00 and 7:15.

Q And when did you quit for the day?

A The time of quitting was 4:30, unless—

Q 7:00 or 7:15 to 4:30?

A Yes, sir.

Q And you took time off for lunch?

A Yes, sir.

Q How much?

A Usually two hours.

Q What? How much?

A Usually two hours.

Q Two hours. That was for how many days a week?

A Six.

MR. SEARLS: You may inquire.

MR. PURNELL: No questions.

ADAMS CALHOUN,

Being first duly sworn, examined in chief by Mr. Searls, testified as follows:

Q Were you sworn, Mr. Calhoun?

A Yes.

Q What is your full name?

A Adams Calhoun.

Q And are you employed at WFAA?

A Yes.

Q What are your duties there?

A Well, principally pay-master.

Q What do you do?

A Keep the record of salaries, pay the checks, issue the checks.

Q Do you make up the checks?

A Yes.

Q Do you receive the time cards the employees turn in?

A Yes.

Q From the employees?

A Yes.

Q The payday at the station is the same as at the News, is it, on Tuesday.

A Yes, sir, it is.

Q And when are the time cards turned in?

A When the checks for the week are received, the time cards covering the same week are turned in.

Q Mr. Calhoun, I will show you these transcriptions of pay-records, which were put in evidence, transcriptions of the pay records of the employees of WFAA. Will you look at that sheet for Mr. Olin Brown? I call your attention to the week ending April 24, 1939?

A Yes.

Q Now, during that week, according to that record, he worked how many hours?

A Sixty-six.

Q Now, his regular weekly salary was forty-five dollars, was it not?

A At that time, yes.

Q And for that week he was paid $57.94, wasn't he?

A For the week of sixty-six hours, yes.

Q Now, will you explain how the $57.94 was calculated?

A Yes, sir, the difference between the point at which we reckoned his additional overtime was fifty-four hours, the difference between the fifty-four and sixty-six, was the number of hours on which we calculate his time and a half overtime.

Q At that time, Mr. Calhoun, did you figure the overtime after fifty-four?

A Yes.

Q Or after fifty-four?

A Yes.

Q Or after fifty-four and a half hours?

A Let me see the date, 1939, fifty-four and a half.

Q Fifty-four and a half?

A Right.

Q Now, there was a time, was there not, when you figured his overtime after fifty-four hours?

A That is right.

Q That was between October 24, 1939 and October 24, 1940?

A That is right.

Q And after October 24, 1940, above what limit did you figure the overtime?

A After October, 1940, to be exact, it was fifty-three and three-tenths. We usually made it fifty-three hours.

Q Did you say fifty-two, or—

A Fifty-three and three-tenths.

Q Fifty-three and three-tenths. You may inquire.

THE COURT: Just a minute. Let me ask you, Mr. Calhoun, if I may interrupt, gentlemen? You say on this date that he worked sixty-six hours on the week ending April 24?.

A Yes, sir.

THE COURT: For that—not for that, but for his regular salary, the salary he was getting that week, he would have received $45.00?

A That is right.

THE COURT: But for that particular week, you paid him $57.40?

A Yes, sir.

THE COURT: But began to figure overtime only after fifty-four and a half?

A That is right.

THE COURT: How did you do that?

A Because in his regular pay of $45.00, there is included time and a half after the regular time, which was then forty-four hours.

THE COURT: You conceive that $45.00 was over the wage and hour requirements to some extent?

A Yes, sir, and included time and a half above the specified time.

THE COURT: All right, thank you, gentlemen.

Q (BY MR. SEARLS) One question, Mr. Calhoun, which I should have asked you before. I will show you these copies of memoranda which are in. This is Exhibit P-18. Will you look at those?

A Which, particularly? All of it?

Q Yes, sir.

A Yes, I issued this.

Q You what?

A I issued this.

Q You issued the original memoranda of which those are copies?

A Yes, I signed them.

MR. SEARLS: That is all.

THE COURT: All right. Those are the ones Mr. Campbell did not recall exactly?

MR. DUKE: Yes, sir.

THE COURT: All right.

MR. SEARLS: That is all, Mr. Calhoun.

THE COURT: Any cross?

CROSS EXAMINATION

BY MR. PURNELL:

Q Mr. Calhoun, this week of April 24, 1939, when Olin Brown worked sixty-six hours, he received $57.94. Will you state what Mr. Brown's basic rate of pay was, per hour, according to the agreement of October, 1938?

A Seventy-five cents.

Q And what was the overtime rate, according to the agreement?

A $1.12 1/2.

Q Now, will you make the computation on that basis, as to sixty-six hours, and see what pay he was entitled to under the terms of the employment agreement? This was during the first year of the Act, so it would take the first forty-four hours at seventy-five cents, wouldn't it?

A I didn't work it that way. Just a minute, let me—

Q I know, but work it my way and see if it comes out the same way as your way?

A All right, what is yours?

Q Take the first forty-four hours at seventy-five cents?

A All right; all right. Thirty-three.

Q That is thirty-three dollars?

A Yes.

Q Now, take the overtime hours of twenty-two hours at $1.125?

A $24.75.

Q What do you get?

A $24.75.

Q All right. $24.75. Now, add the two together, the $33.00 and $24.75 .

A $57.75.

Q And he was actually paid how much?

A $57.94.

Q All right, now, I will ask you if your way of calculating the thing did not come out with substantially the same answer, always?

A Substantially the same.

Q As this method of calculation?

A Yes, sir.

Q And if your method of calculation was not merely a short cut, a shorthand way of getting the answer quickly?

A That is all.

MR. PURNELL: That is all.

THE COURT: All right.

MR. SEARLS: That is all.

ROBERT MOUNTIQUE,

Not being first duly sworn, examined in chief by Mr. Searls, testified as follows:

Q What is your name?
A Robert Mountique.
Q You work at the News?
A Yes, sir.
Q What department?
A The basement.
Q What do you do?
A Well, I save paper, and, well, really, I work in the press room, too, I work both places, the press room and the basement, just general cleaning up.
Q You say you work on the paper?
A Yes, sir.
Q You mean you receive it as it comes in?
A Yes, sir.
THE COURT: Were you sworn this morning, Robert?
MR. SEARLS: I don't know.
THE COURT: Well, stand up and be sworn.

(At this time the witness was sworn)

Q (BY MR. SEARLS) For the record, what is your name?
A Robert Mountique.
Q And you work in the paper room of the News?
A Yes, sir.
Q What other people work there in that same room?
A Nathan Fair and S. W. Smith.
Q Who?
A S. W. Smith.
Q Did Roosevelt Burleson work there?
A He did, he isn't working there now, but he did.

Q When do you go to work in the morning?

A Well, three mornings I go to work at 6:00 o'clock, and—

Q And you get off on those days when?

A I get off at five.

Q You take how much time off for lunch?

A Two hours off for lunch.

Q And the other people in the same room work the same hours those days?

A Well, no, sir, that other man that works there in the day, he doesn't have the same hours that I have, that is, not the same lunch hour.

Q Now, you have spoken of three mornings. How many days do you work a week?

A I work a week.

Q What time do you go to work the other days?

A Eight o'clock.

Q And you get off when?

A Five.

Q And on those days how much time do you take?

A Two hours on each day for lunch.

Q When you hand in your time card, to whom do you hand it?

A Well, there is a place on the desk that I usually put my time card, on the boss' desk, in the press room.

Q When you hand it in, to whom do you give it?

A To Mr. Sam Moss.

Q What is his job?

A He is boss down there.

Q What day do you give it to him?

A On Mondays.

Q And you get paid on Tuesdays?

A On Tuesdays, yes, sir.

Q Now, who hands you your pay check?

A Mr. Martin Josh, as a rule.

Q That is his job?

A I think he is a boss in the press room, I am not sure, but that is what I think.

Q Before the Fair Labor Standards Act went into effect, on October 24, 1938, what pay did you get there?

A Fifteen dollars a week.

Q That is for a six day week?

A Yes, sir.

Q If you worked the seventh day, what did you get for that?

A Well, $17.50.

MR. SEARLS: You may inquire.

MR. PURNELL: No questions.

HAL MEDFORD MORROW,

Being first duly sworn, examined in chief by Mr. Searls, testified as follows:

Q What is your full name?

A Hal Medford Morrow.

Q You work at the News?

A Yes, sir.

Q In what department?

A Mailing department.

Q What do you do there?

A Well, the various duties that are to be performed in the mailing and routing of the Dallas News.

Q What do you do in connection with those papers that are sent out through the mail?

A Address them, bundle them.

Q And deliver them to whom?

A We just drop them down a chute that comes up to our department there.

Q What day of the week do you hand in your time card?

A Monday morning.

Q To whom?

A To the foreman of the department, usually

he isn't at his desk, and we just drop it on his desk there.

Q Your weekly salary at present is $30.00, is it?

A That is right.

Q Does that represent a raise that you have received in the last two or three years, from some other figure?

A Yes, sir.

Q What was that previous figure?

A $28.00 weekly.

Q Do you recall to what date you received the $28.00?

A No, I don't.

Q Have you ever received any pay in addition to your weekly salary?

A Have I ever received any?

Q Yes.

A Yes, sir.

Q When?

A Well, I believe it was up until, May, 1939.

Q How much extra did you receive then?

A Well, it was just figured on the amount of overtime that was put in that week.

Q Do you know how many hours a week that was figured, when you say overtime, I mean over how many hours?

A Well, I couldn't say right now. It was over whatever the set amount of hours was at that time. I would have to figure back a little bit.

Q You mean the amount?

A Yes, sir.

Q You mean the amount of hours as set by the law at that time?

A When the law went into effect, and before that, the amount of hours was set by the company.

Q Well, I am asking you now, Mr. Morrow, about the period from the time the law went into effect on October 24, 1938, to, I think you said, about May of 1939?

A Yes, sir.

Q During that period, when you received extra compensation in excess of how many hours did you work those weeks?

A Well, I believe when the law went in, it was forty-four. If we worked in excess of forty-four, we received the pay for it.

Q Do you know on what basis that overtime was figured?

A Time and a half.

Q Time and a half for what, Mr. Morrow?

A My salary that I was receiving, yes, sir, at that time I believe it was $28.00.

Q Do you know how that was figured?

A No, I don't.

Q Oh, you have been receiving a vacation with pay, have you?

A Yes, sir.

Q Since when?

A I believe last year was the fourth that I received a vacation with pay. I received a few weeks paid vacation only two years.

Q And before that you received how much?

A One week for two years, and before that none.

Q Did you have any discussion with anybody before you received the two weeks instead of one?

A Yes, sir, the employees in the room there got up a little letter, and sent it into the management and requested a two-weeks paid vacation and in the letter, we waived any right for overtime, if we would receive the vacation.

Q Do you recall when that was?

A No, I don't. It was sometime previous to the summer of 1939; I couldn't say when.

MR. SEARLS: You may inquire.

CROSS EXAMINATION

BY MR. PURNELL:

Q Mr. Morrow, at that time a contract was made with the people in your department, specifying a basic wage, and time, overtime, and a guaranteed minimum sum, was there not?

A Yes, sir.

Q And you got the two weeks vacation, did you?

A Yes, sir.

Q With pay?

A Yes, sir.

Q And was overtime paid regularly, thereafter, whenever you worked over the legal maximum on the basis of the rates specified in the letter agreement?

A Well, I never worked overtime on the basis specified in that agreement.

Q I see. You never have had occasion to receive more than your minimum wage?

A That is right.

Q You have received that?

A Yes, sir.

MR. PURNELL: That is all.

THE COURT: All right.

MR. SEARLS: That is all.

CLIFTON B. MILLS,

Being first duly sworn, examined in chief by Mr. Searls, testified as follows:

Q State your full name?

A Clifton B. Mills.

Q What do you do at the plant of the Dallas News?

A The electrician.

Q Can you give us in a little more detail what you do?

A Well, generally, I do just general electrical maintenance work.

Q On the machinery that connects the machinery there with the City Electric System, is that it?

A Well, no, all of our machinery is independently driven, but it is on a motor. I take care of all the motors, and the lights, and controlling apparatus.

Q When you hand in your weekly time card, Mr. Mills, to whom do you hand it?

A To the foreman, or the chief in my department, Mr. Guillot.

Q And on what day of the week?

A Usually Tuesday at noon, or Tuesday morning, sometimes Monday night after work.

Q And you get your pay check when?

A Tuesday, about noon.

Q From whom?

A Mr. Guillot.

Q What is your weekly salary at present?

A $42.50.

Q What was it in October, of 1938?

A I don't remember. I imagine it was about forty dollars.

Q Have you ever received any compensation in addition to your weekly salary?

A No, sir, with the exception of a bonus around Christmas.

Q Except for that, you have not?

A No, sir.

Q Have you ever made any request of any of your superiors that you would be paid on other than a weekly basis?

A No, sir, I have intended to several times, but I have not.

MR. SEARLS: You may inquire.

CROSS EXAMINATION

BY MR. PURNELL:

Q Mr. Mills, I observe from the contract, employment contract, dated October 22, 1938, that your basic rate of pay was sixty-three cents per hour, and your minimum guaranty was $37.50, is that right?

A I don't know, it was $37.50 or $40.00; I got about $2.50 a week raise in the last—

Q I observe on October 24, 1939, your basic rate of pay was raised to sixty-seven cents, and your guaranteed minimum to $40.00, and that on June 11, 1940, just this last year, you were raised again to seventy-one cents per hour, and $42.50, is that right?

A Yes, sir.

Q Now, did you receive payments each week at the amounts that you were entitled to under the terms—

A Yes, sir.

Q Of these agreements?

A Yes, sir.

Q Now, you got two weeks vacation last year, and two weeks vacation the year before, and you have had some days, maybe ten or twelve days time off for illness in the same period?

A Yes.

Q And you were paid during the vacation and illness periods?

A Yes, sir.

Q That is all.

A I don't think I have had that much off through sickness, probably three or four, possibly five days.

MR. PURNELL: That is all.

CYRUS CECIL ANDERSON,

Being first duly sworn, examined in chief by Mr. Searls, testified as follows:

Q What is your full name, Mr. Anderson?

A Cyrus Cecil Anderson.

Q In what department do you work at the Dallas News?

A Bookkeeping department.

Q Who is your immediate superior?

A Mr. J. E. Taggart. I work directly under Mr. J. W. Truly, and Mr. Taggart is the department head.

Q How long have you worked for the News?

A Nineteen years last September 15.

Q When the Fair Labor Standards Act went into effect in October, 1938, was there any change in your hours or pay?

A I don't recall at the present time, no, sir. I don't think so.

Q Was there any change last October, October, 1940?

A I had an increase in salary in August of 1939, and then I had another one since that time, I don't recall just the exact date.

Q Do the time cards of the employees come across your desk?

A I help assemble them, yes, sir.

Q You receive them from the employees, themselves, in some departments?

A Some of them I do, in the business office. I usually pass out the checks to several employees, yes, sir, and get the cards at the time I pass the checks. Sometimes they don't have the cards ready and turn them in later.

Q And from other departments, you receive them from the heads of the department, do you?

A That is right.

Q Do you make up and compute the time, the paychecks at the News.

A I work on it, I don't do it all by myself, I assist Mr. Truly.

Q Well, do you have a machine there that makes out the paychecks, do you?

A Yes, sir; yes, sir.

Q And do you operate that machine?

A At times, yes, sir, part of the time.

Q And a check is written in that machine, isn't it?

A That is right.

Q Do you, when you make up the check, do you deduct anything from the weekly salary?

A The social security tax, yes, sir.

Q And then—

A And any other deductions they might have.

Q When do you start figuring up the pay for the week?

A We start writing the payroll on Friday morning for the regular office employees, regular weekly salaried employees.

Q And when do you start for the others—oh, you say the weekly salaried employees?

A Started on Friday morning, yes, sir.

Q Well, that includes all except the—

A Mechanical end.

Q —the union departments?

A That is right.

Q I will show you this ledger sheet which is P-13. Does this machine on which you make up the paychecks also make the ledger sheet?

A Yes, sir.

Q What is the process of making out a paycheck, will you describe it to us? Take this one, for Mr. Mills, dated February 28, 1939, for $33.70?

A Do you want me to refer to it here?

Q Yes, you may refer to the ledger sheet there.

A All right, sir. The first thing I do in entering it on the machine, you pick up the previous balance they have earned up to that week, and you enter that on the machine, and then—

let's see. I don't seem to have Mr. Mills' sheet here for that date.

Q What other paper do you want, Mr. Anderson?

A I don't have Mr. Mills sheet for February 28, 1939 here.

Q Isn't it on the back there?

A There is only one sheet for Mr. Mills, and that is all.

Q Well, tell us generally with reference to that particular check?

A Enter up the balance they have earned, up previous to this week, on the machine. That is carried through a cross footing, as we call it, and then enter the amount of the weekly wage, which automatically adds into it on the cross footings, and it also goes into the cross footings and you also enter in the social security and it takes out the social security tax, and when you do that, that is automatically deducted from where the check comes from, and then over in the other deductions, insurance and what other deductions they might have, lunch room deductions, and anything in the deductions, that automatically comes out, and then you get over to the last column, that is your balance up for that week, comes out in the cross footing, and that leaves in your right hand cross footing the net amount, less all deductions.

Q Mr. Anderson, after you receive the time cards, what do you do with them?

A We, as we receive time cards from all who are supposed to turn them in, I assemble them and usually check them, not always, and Mr. Truly goes through and checks the hours, I believe.

Q And you hand them over to Mr. Truly?

A He checks them.

Q Or he takes them from your desk?

A Yes, sir.

Q I will show you Plaintiff's Exhibit 2, the transcriptions of the employees at the News, and call your attention to the page or records of Mr. Eastus. Now, Mr. Eastus does more than one type of work, does he not?

A That is right.

Q What other types of work does he do?

A He has charge of the store room, that is his regular job, under the maintenance department, and then he cuts paper extra, I believe that is what he gets paid extra for.

Q And what was that last?

A Cutting paper.

Q I call your attention on that to the week ending—on the first page, April 29, 1940. We have there fifty-two and a half hours, and then that is divided into seven and a half and forty-five. Does that indicate that he worked different amounts of times at the two jobs?

A That is forty-five hours on his regular job and seven and a half hours cutting paper, I believe is the way that figures out. I am not positive about that.

Q And what rate of pay is he paid for cutting paper?

A I don't figure that, that comes to us on a payroll from the business department, Mr. Eastus' department has already figured it out, we just check it to see it is right. I don't recall—

Q What do you check it against?

A It has on there the rate per hour that he is to be paid on his overtime work.

Q Now, I ask you for April 29, 1940, did I?

A Yes, sir.

Q I call your attention to a letter addressed to Mr. Eastus dated October 24, 1939, which is part of P-6. That states, does it not, that his pay check, rate of pay per hour, will be thirty cents. Will you look at that sheet which you hold, Mr.

Anderson, and pick out another week in which he worked on paper cutting?

A I couldn't say whether he was working on paper cutting or not, I sure don't know whether he was on the maintenance job or the other job.

Q Look at the week ending, it is about the middle of the first page, December 3, 1938. There are three figures there for hours, and three figures for items of wages. Does that indicate that he did three kinds of work that week?

A I just wouldn't know.

Q You don't know about that. You simply made that up from the—

A Just from what is turned in from the various departments; he sometimes worked in the mail room, slipping papers, I guess it is, on some night work during the week when they have a large cut of paper, or something like that coming up.

Q That payroll ledger, those sheets here which are P-13, they contain all the computations that you do?

A That is right.

MR. SEARLS: You may inquire.

MR. PURNELL: No questions.

MRS. HELEN McCUNE LOVELL,

Being first duly sworn, examined in chief by Mr. Searls, testified as follows:

Q Mrs. Lovell, in what department of the News do you work?

A National Advertising.

Q What type of work do you handle?

A Well, I do mostly typing of reports and do lineage figures, and partially information desk on the first floor.

Q Are there any other girls working in the department, doing the same things you do?

A Well, not exactly; there are two other

girls in the department I work in, but they do most of the secretarial work.

Q Last October, in 1940, was there any change in your working hours or your pay?

A No.

Q Was there in October, of 1939?

A No. No, I don't believe so. I got a raise, but I don't remember exactly when.

MR. SEARLS: You may inquire.

MR. PURNELL: No questions.

THE COURT: All right.

MISS RUTH MOFFETT,

Being first duly sworn, examined in chief by Mr. Searls, testified as follows:

Q In what department of the News do you work, Miss Moffett?

A The biographical department.

Q Will you tell us what you do?

A I am care clerk.

Q What?

A Care clerk, filing.

Q You keep track—

A Of biographic, photographic—

Q And articles that are filed there?

A Yes, I do.

Q How many other employees are in that department?

A Three others.

Q What do they do?

A Well, just filing, the same work.

Q I mean, you are doing the same work?

A Yes, sir.

Q Before the wage and hour went into effect in October of 1938, what hours did you work a week?

A I believe it was forty hours a week.

Q Was it forty, or forty-four?

A I believe it was forty, I am not sure.

Q You have handed in a time card each week since, haven't you?

A Yes, sir, I do.

Q You handed it to whom?

A Well, to the department head, who turns it over to the bookkeeping department.

Q You hand it in to the head of your department?

A Yes, sir.

Q And do you get your check from the head of your department?

A Yes, I do.

Q When do you hand in your time card?

A Just as soon as I get my check.

MR. SEARLS: You may inquire.

MR. PURNELL: No questions.

M. M. DONOSKY,

Recalled, and examined in chief by Mr. Searls, testified as follows:

Q Mr. Donosky, I want to ask you one or two questions about the hours and compensation of these employees in the mechanical department. You say Mr. Prasifka is in charge of that?

A He is the bookkeeper, the time clerk, record clerk for Mr. Debente. Mr. Debente is the mechanical head.

Q Does Mr. Prasfika figure out the amount of pay?

A Yes, sir, he figures out the amount of pay in accordance with the contract they turned in, and time card.

Q After he was summoned here, he was called away?

A Yes, sir, he told Mr. Debente Saturday afternoon his father-in-law was hurt or seriously ill or something, and the attorneys concurred and said it was all right to release him, so he was released.

Q You are familiar with it?

A I am familiar with the contracts and all of the details of the mechanical department's operations, yes, sir.

Q Speaking generally, Mr. Donosky, there are three union contracts there?

A That is right, yes, sir.

Q With three different unions?

A That is correct.

Q But do they all operate in the same general manner as to hours and pay?

A Yes, sir, the contracts with the—there is a typographical union and there is a pressmen's union, and there is a stereotypers union. It is a local union, and each of them have a charter from the national unions. Now, we negotiated contracts with it, and yearly the wage contract comes up for renewal, or sometimes it goes over for two years, and it specifies the rate per hour, it specifies overtime rates and specifies the number of hours per day that is in a shift, and the number of shifts that those men can work per week. I have copies of the contracts here.

Q Those contracts were last negotiated when?

A They were last negotiated—well, we are in negotiations right now with the typographical union and the pressmen's union, we had an arbitration case on it, that we settled about a year ago.

Q What I am after, Mr. Donosky—

A Yes, sir.

Q —is when the contracts now in effect were written?

A They were written five years ago, subject to reopening as to certain clauses every year; they are five year contracts.

Q Now, I call your attention to Exhibit P-2, to the page of J. A. Moore, stereotypist?

A Yes, sir.

Q Now, for the first item, the week ending October 8, 1939, it says six days, 295 minutes, O.T., Overtime, doesn't it?

A I presume that means overtime, yes, sir.

Q Now, six days under one of those union contracts, is how long?

A It is forty-five hours. The shift is seven and a half hours, that is what each shift is comprised of, with each one of the three unions, and the contracts are five day contracts, or five shift contracts, but if the union cannot furnish a man for the sixth shift, when extra work comes up, and they cannot furnish a man for the sixth shift, another man, then they must require one of the men who has worked the five shifts to work the sixth shift, and then they require the men to throw off that time later on to an extra when he comes in.

Q That is, if a union man is one of your mechanical departments works five days, that will be thirty-seven and a half hours?

A. That is correct, yes, sir.

Q And if he works a sixth day?

A That would be forty-five hours.

Q Forty-five hours?

A Yes, sir.

Q Now, under your union contract, how are the men compensated for overtime?

A For overtime? When it is overtime, they just—we don't have, where a regular man doesn't have to fill an extra shift, the overtime is on the basis of time and a half after seven and a half hours.

Q That is, if a man works eight and a half hours?

A He gets one hour overtime at time and a half.

Q Yes.

A Meaning he gets for the eight and a half hours, he gets nine hours and a quarter pay.

Q But, if one of the union members works six days, seven and a half hours a day, am I correct in stating that he doesn't receive overtime?

A Where the man works a sixth day, it is because the union cannot furnish another printer, and they are required to work the straight time rate for the sixth shift, that is the contract between the union; however, that particular man that works on that sixth shift must lay off that time, at a later date, to give one of the extra men that time, when an extra man shows up on the board.

Q These union men are paid on a daily or hourly basis, are they not?

A They are paid on an hourly basis, the contract provides for so much per hour, and so much per day of so many hours, and it says that the regular shift holder shall work five shifts per week.

Q And if he works an additional shift, he has to give an opportunity, at some later week—

A That is right.

Q —for some other union man to work?

A For some other extra man, that is a union by-laws and union rules calls for the policing of all of that.

Q And in each instance, the union man is paid only for the hours actually worked?

A That is correct, yes, sir, except I will say this, that down at our institution, regardless of the fact we have union contracts, or contracts with those three departments, we do, the men who have been there twenty-one years, and they have a twenty-one year club down there, they get one week, they get a paid vacation of one week, regardless of the contract, and then we have other cases that some of those union employees that are superannuated, that the office takes care of regardless, and they come in on the Christmas—they get a little Christmas check. I mean, there

are certain things that are done for those folks down there.

Q I understand that.

A Yes, sir.

Q But I mean, the union pay is figured only on the basis of the time worked?

A Only on the basis of the time worked, that is what the contracts call for, and that is generally the practice. I might say, however, if a man is off one day or two days, he doesn't get paid if he works under a union contract, or three days, or if he works five hours, he gets paid for five hours.

Q And due to union rules, a man's place is taken next week by another man?

A That is right, or as soon as possible, that is what their rules call for.

MR. SEARLS: You may inquire.

MR. PURNELL: No questions.

MR. SEARLS: That is all.

THE COURT: Does plaintiff rest?

MR. SEARLS: If Your Honor please, may we have a five minute recess? We have one more witness.

THE COURT: Sure.

(RECESS)

H. L. SHERRILL,

Being first duly sworn, examined in chief by Mr. Searls, testified as follows:

Q What is your name?

A H. L. Sherrill.

Q And are you connected with the wage and hour division, Mr. Sherrill?

A Yes, sir.

Q In what capacity?

A Supervising inspector.

Q And at my request, did you figure the amount of underpayment of any of the employees of the Dallas News for any period of time?

A I did.

Q Are these the sheets on which you made your computations?

A They are.

Q Now, will you tell us for what employees you made computations?

A I made computations for Olin Brown, O. L. Bagwell, Charles Prasifka, and William Snodgrass.

Q Did you base those computations on any interpretations of the wage and hour division which are in written or printed form?

A I did.

Q Those are what?

A Regulation 516 and interpretive Bulletin No. 4.

Q Have you those with you?

A Yes.

Q Are those publications of the Wage and Hour Division which had been generally issued?

A Yes, sir.

Q And issued to the public?

A Yes, sir.

Q May I see them?

MR. SEARLS: I will offer these.

MR. PURNELL: May I see them? To save time, do you have extra copies that we may have?

MR. SEARLS: Yes, sir.

MR. PURNELL: Then, you go right ahead.

MR. SEARLS: I want to show the basis on which he made his figures.

(At this time the first instrument above referred to, being a booklet consisting of seven pages, and designated "Regulations on Records to be Kept by Employers" was marked by the reporter, "Plaintiff's Exhibit No. 23".)

(At this time the second instrument immediately

above referred to, consisting of twenty-three pages, and designated "Interpretive Bulletin No. 4" maximum hours and overtime compensation, was marked by the reporter, "Plaintiff's Exhibit No. 24".)

(BY MR. SEARLS) What did you figure as the total underpayment for the four employees you have named, Mr. Sherill?

A For Olin Brown for the weeks computated, I show the additional amount due at $36.64. For O. L. Bagwell, additional amount of $54.71 —no, 54.51; for Charles Prasifka, $49.43; and for William Snodgrass, $15.55.

Q Now, I will show you, Mr. Sherrill, some transcriptions which are marked Exhibit P-2. Will you locate the names that you have mentioned in these sheets, and tell us if the week for which you computed the figures you have just given us are for the weeks represented on those sheets?

A For each one specifically?

Q Well, you can merely say whether they are or are not, for Mr. Bagwell, and so on.

THE COURT: Well, are they on there, counsel?

MR. SEARLS: Yes, they are.

THE COURT: Well, let the record show that.

Q (BY MR. SEARLS) Mr. Sherrill, Exhibit P-3 contains a transcription of the record of Olin Brown. I think we can maybe take, your Honor, those are also the weeks which he computed in that case.

THE COURT: All right.

Q (BY MR. SEARLS) Turn in P-2, Mr. Sherrill to the record of O. L. Bagwell?

A Yes, sir.

Q Take the week ending January 9, 1939?

A All right.

Q How much under payment did you compute for that week?

A There was no under payment for that week.

Q January 9.

A Wait a minute. Excuse me. For January 9, there was an underpayment of $1.25.

Q Now, will you explain to the court very carefully how you figured that? What was the first thing you did?

A Well, his weekly pay was $26.75, and inasmuch as he worked regularly forty-eight hours per week, I divided the forty-eight into twenty-six dollars seventy-five cents, in order to get the regular rate of pay.

Q And what figure did you get as the regular rate of pay?

A Fifty-five and seventy-three one hundredths cents (55.73), but for calculation purposes I used 56 cents.

Q And then what did you do?

A I computed the amount due for the statutory maximum hours of forty-four, by multiplying forty-four by the regular rate of pay of fifty-six cents.

Q And you got how much for that?

A $24.64.

Q That was for forty-four hours?

A For forty-four hours, yes, sir.

Q And your next step was what?

A To figure, I calculated, computed the amount due for hours worked in excess of forty-four.

Q How did you do that?

A By multiplying the number of hours in excess, which is four, by one and one-half times that regular rate of pay, which was eighty-four cents per hour.

Q And you got what figure for that?

A $3.36.

Q Now, will you take the record in that exhibit which is before you, P-2, of Snodgrass?

A Are they alphabetical?

Q Yes. Mr. Sherrill, do you have that?

A Yes, sir, William Snodgrass.

Q Yes. Take the week ending November 4, 1940?

A All right.

Q Will you tell us first, did you compute any amount of underpayment for that week?

A Yes, sir.

Q How much?

A $1.07.

Q Now, will you tell us how you did it?

A This man worked the same number of hours for a succession of weeks, forty-six per week, and I computed the regular rate of pay by dividing forty-six into his weekly wage of $20.00.

Q And that gave you what as the regular rate of pay?

A Forty-three cents per hour.

Q And what did you do then?

A That being after the forty-hour period commenced, I used—I multiplied forty hours by forty-three cents, to compute the amount of wages, due for the statutory hours before overtime.

Q Now, have you stated the amount you found to be due for forty hours?

A $17.20.

Q And what did you compute as the amount due for overtime?

A $3.87.

Q And that was computed. Have you explained how you computed that?

A I computed the time and a half, the one and one-half times the regular rate of pay, which was sixty-four and a half cents. He works forty-six hours, which was six hours in excess of the required forty, so it is six times sixty-four and a half cents, gives you the amount of overtime paid, $3.87.

Q Will you turn to the record of Charles Prasifka?

A I have it, sir.

Q Will you take the week ending April 2, 1939?

A Yes, sir.

Q Did you compute any overtime as due that week?

A I computed seventy-eight cents due that week.

Q Will you explain the process you went through in that instance?

A This employee worked a fluctuating weekly hours. In other words, on different hours almost every week, so it became necessary to divide his rate of pay, which was $34.00 per week, by forty-six hours, the hours that he worked that week, in order to get the regular rate of pay of seventy-four cents per hour.

Q Let's see. That was in April, 1939?

A Yes, sir.

Q Then, what did you do?

A I computed the amount due for the first forty-four hours, by multiplying forty-four by seventy-four, which was the regular rate of pay, which gave $32.56, that being in a forty-four hour period, there was two hours overtime, which would be multiplied by one and one-half times his regular rate of pay, which equaled $1.11 per hour, or an amount for overtime of $2.22, giving a total amount due of $34.78.

Q And what was the total under payment for the weeks listed that you computed for Mr. Prasifka?

A I computed twenty-eight weeks in a total amount of $49.43 due.

Q Now, I will show you exhibit P-3. Will you please turn to the record of Olin Brown?

A Yes, sir.

Q I call your attention to the week ending

November 4, 1940. That is near the bottom of the page, Mr. Sherrill?

A Yes, sir.

Q Did you compute any under payment for that week?

A I computed $5.38 underpayment.

Q Will you explain your computation?

A Mr. Brown works, according to the sheet, fifty-three and a half hours, that week. He was being paid at the rate of forty-five dollars per week, and the regular rate—inasmuch as he worked in excess of the forty hours per week, it was necessary to compute the regular rate of pay, which in this instance, was eighty-four cents per hour, by dividing forty-five dollars by fifty-three and a half hours. Then, I multiplied that.

Q All right. Did you say what you got as a result of that division?

A Eighty-four cents.

Q Eighty-four cents?

A Then, I multiplied the eighty-four cents by forty, to get his regular pay before overtime. That came to $33.60. The overtime hours in that case, fifty-three and a half, less forty, was thirteen and a half hours, at one and one-half times the regular rate of pay, one and one-half times the eighty-four cents, or $1.26. It amounted to $17.01, or a total of $50.61.

Q Now, take for Olin Brown, Mr. Sherrill, the week ending April 24, 1939?

A All right.

Q Did you make any computations for that week?

A I found no additional payments due, I made computations, but I found—

Q Did you find he had been paid too much?

A Yes, sir, I found he had been paid $5.58 more than the correct amount.

Q How did you figure that?

A For the week ending April 24, Mr. Brown

worked sixty-six hours; his weekly pay had been running $45.00 per week, that in the same manner as the other calculation, by dividing the number of hours worked into his weekly wage, gave an hourly wage of sixty-eight cents per hour, and being a forty-four hour year, forty-four multiplied by sixty-eight was $29.92 at regular pay, and twenty-two hours of overtime at one and one-half times the regular rate, or $1.02, amounted to $22.44, or a total of $52.36. He was that week paid $57.94.

Q Now, your figures that you have given us, Mr. Sherrill, for totals of these employees are limited to those particular weeks, are they not?

A Limited to the particular weeks for which I found additional wages due.

Q Now, I will ask you to turn back to Exhibit P-2, and look at the record of Audrey Batts.

A I have it.

Q Take the week ending November 14, 1938.

MR. PURNELL: Which one is this?

MR. SEARLS: Audrey Batts.

Q (BY MR. SEARLS) You have not previously made any computation on that week, have you?

A No.

Q In that case, Mr. Sherrill, going on the method you have described, how would you compute the regular rate of pay for that week?

A I would compute the regular rate of pay by dividing her weekly salary, $18.00, by forty-four hours that she worked.

Q And that being during the first year of the Act, there would be no overtime?

A Yes, as a matter of fact, if I were trying to determine which—how much was due, I would compute no rate of pay there, because she did not work overtime.

Q But her regular rate of pay would be what? Will you figure that for us, please?

A It would be forty cents an hour.

Q That is eighteen divided by forty-four?

A Yes, sir.

Q Now, take Audrey Batts for the week ending December 2, 1940. Will you make the computations that you have made in these other instances and in that instance?

A Well, there are none to be made,—oh, excuse me. I would still say the regular rate of pay is forty cents per hour.

Q How much?

A Forty cents per hour.

Q That is—

A Because she was working forty-four hours and getting $18.00.

Q That is eighteen dollars divided by forty-four?

A Divided by forty-four, and then there would be, for the regular pay, would be forty times forty, or sixteen dollars would be her straight compensation for the first forty hours, and the next four hours, this being December 2, 1940, it would be four times sixty, because sixty is one and one-half times her regular rate of pay, which would be $2.40, and she would be due $18.40.

Q So, there would be a forty cents underpayment?

A That is right.

Q For that week?

THE COURT: I believe we will have to quit.

MR. SEARLS: If Your Honor please, I might say I only anticipate one or two more questions, and then the cross examination.

THE COURT: All right.

MR. SEARLS: There will be no other evidence so far as I know.

THE COURT: All right.

Q (BY MR. SEARLS) Mr. Sherrill, will

you make one more computation in the case of Miss Batts, use this paper here?

A Miss Batts, this Audrey Batts?

Q Yes. Take that same week, the last week I think on the list?

A All right.

Q December 2, and figure on forty hours at thirty cents per hour?

A Forty hours at thirty cents, it would be $12.00.

Q And there are four hours overtime, are there?

A Yes, sir.

Q You would figure that, if you were starting with thirty cents, at what?

A It would be at forty-five cents.

Q And that would give you what?

A $1.80.

Q The total for those two figures would be what?

A $13.80.

Q Now, she actually received that week $18.00?

A That is right.

Q And the difference is what?

A $4.20.

MR. SEARLS: That is all, Mr. Sherrill, subject to cross examination.

MR. PURNELL: If Your Honor please, I should like an opportunity—

THE COURT: I believe I will let you cross in the morning, if you have no objection.

(At this time an adjournment was taken to 10:00 o'clock A. M., on February 4, A. D., 1941, at which time the following proceedings were had:)

MORNING SESSION

February 4, 1941

MR. SEARLS: Your Honor, I wish to ask Mr. Sherrill one or two other questions.

Q (BY MR. SEARLS) Mr. Sherrill, there is one question I omitted to make clear yesterday, perhaps. These computations which you have made were for certain specified weeks, were they not?

A They were.

Q And those were for the weeks set out in those transcriptions in the exhibits which I show you?

A Yes, sir.

Q And for no other weeks?

A For no other weeks.

MR. SEARLS: We offer in evidence the computation made by Mr. Sherrill.

(At this time the above instrument was marked "Plaintiff's Exhibit No. 25".)

CROSS EXAMINATION

BY MR. PURNELL:

Q In making these computations, you followed some theory?

A I followed out regulations and instructions.

Q I can call it a theory; you mean that it is the theory that is expressed in interpretative bulletins and regulations and instructions from Washington, as you understand them?

A Well, I have never gone into the matter of the theory.

Q You followed the regulations and instructions from Washington?

A That is right.

Q You mention interpretative Bulletin No.

4 as one of the instructions, that it is the instruction you followed, isn't it?

A Yes, sir.

Q Did you attempt to follow this interpretative bulletin in your computations?

A I did.

Q Observe from your computations, for instance, with respect to O. L. Bagwell, that you took $32.00 as to him in the week of March 6, 1939, as total wages paid, and divided the number of hours he worked in that week into $32.00 to arrive at what you call the regular rate of pay, that is correct, isn't it?

A I don't recall the specific week, but that is the principal upon which I have computed.

THE COURT: January 9, 1939.

MR. PURNELL: April 9, 1939.

THE COURT: January 9, I think.

Q (BY MR. PURNELL) That is the same hours and the same total wages in the week, as in the next four or five following weeks; now, will you get before you your computation so you can follow me, please?

A Yes.

Q Now, I observe from paragraph 13 of the interpretative bulletin No. 4, that extra compensation paid for overtime need not be included in determining the employee's regular hourly rate of pay. Now, I take it from that that of the $32.00 we would use for Bagwell, you did not allocate any portion of that as compensation for overtime work, is that correct?

A That is correct.

Q Now, did you make any investigation to determine what part of that $32.00 was paid for overtime work?

THE COURT: We are not working together, counsel, that is not the figure that he used, and we will make our record poor if we do that. My

memoranda shows that the figure Bagwell got paid, $26.75, weekly pay.

Q (BY MR. PURNELL) Let us go back to the week of January 9, 1939?

A Yes, sir.

Q And is $26.75, the figure you used?

A That is right.

Q And forty-eight hours is the hours you used?

A That is right.

Q You divided forty-eight into $26.75, getting, I believe you say, about fifty cents?

A Fifty-six cents.

Q Now, did you make any investigation to determine what part of the $26.75 was compensation for overtime, and what part was compensation for the hours worked up to forty-four?

A No, because the weeks preceding it was forty-eight hours, and the weeks preceding, before that, fifty hours—in other words, he was receiving every week, $26.75 regardless of the number of hours he was working, and, therefore, it was considered to be his regular rate of pay on a weekly basis for the purpose of compensation for overtime.

Q That is to say, you used the $26.75 as if it were wholly allocated to the first forty-four hours of work of Mr. Bagwell?

A No, sir, that was wholly allocated to the total number of hours he worked.

Q Well, now, was any part of that $26.75 paid for overtime work above forty-four hours?

A I didn't so consider it.

Q Then it is correct that you treated the whole of that amount as allocated to the first forty-four hours that he worked?

A No, sir, I treated it as being straight time for the total number of hours that he worked during the week.

Q Did you, for instance, inquire to see

whether there was an employment contract with Mr. Bagwell which specified what part of the $26.75 should be allocated to the first forty-four hours, and what part should be allocated to the work beyond the first forty-four hours?

A I didn't have any knowledge of the employment contract, however, based upon the fact that on the week ending October 31, he worked fifty hours and received $26.75, and the several following weeks he worked forty-eight hours and received $26.75, I naturally had to assume that $26.75 was his regular rate of pay on a weekly basis.

Q Did you follow that same assumption right on through in all of your computations?

A No, sir, I didn't. There are one or two exceptions, not in this particular form, but as to others.

Q As to Bagwell, did you follow that same assumption right on through?

A Yes, sir.

Q Do you know now what the employment agreement may be, as to allocating that $26.75, between regular time pay and pay for overtime?

A I do not.

Q But you do know that if any part of that sum is properly allocable to the overtime pay, that that portion is to be deducted in making the computation that you make, do you not?

A That is right, we didn't figure overtime on overtime.

Q And if any portion of the $26.75 is allocable to overtime pay, then the regular rate, as you compute it, would be wrong?

A That is right, if some of it was overtime.

Q Now, we take the week in March, the week you have mentioned—January 9, 1939, he received $26.75, and worked forty-eight hours, didn't he?

A Yes, sir.

Q Now, will you take the week of October 31, 1938?

A Yes, sir.

Q He received $26.75, didn't he?

A Yes, sir.

Q And he worked fifty hours?

A Yes, sir.

Q Now, the regular rate of pay as you compute it would therefore be less in that week of October 31, than it was in the week of January 9, 1939, wouldn't it?

A Not in the case of Bagwell, for the reason that it is only three instances in the entire period of thirty weeks in which he worked hours other than forty-eight, a week, and, therefore, I consider that it was regular hours per week, and I used forty-eight hours.

Q Let us see about that. He worked twelve hours on the week of September 2, 1940, didn't he?

A That is right.

Q And he worked thirty-six hours in the week of July 31, 1939?

A That is right.

Q And he worked fifty hours in the week of October 31, 1938?

A Yes.

Q Now, you would not use twelve and thirty six and fifty as your divisor, on those weeks, because in the great majority of weeks he worked forty-eight hours, you say you used forty-eight as the divisor for all of the weeks?

A That is right.

Q Suppose there had been four weeks instead of three weeks of varying hours, what would you have done?

A I would still use forty-eight.

Q Suppose there had been five weeks, what would you have done?

A Out of thirty, I would say that five weeks

would not be considered as changing it from regular hours per week.

Q Suppose he worked six weeks—

MR. SEARLS: I pray Your Honor's judgment, isn't this getting into argument?

THE COURT: Yes, it is rather hypothetical, I think we had better stand on what was done.

Q Well, there is a line, isn't there, where you would change your method of computation from the straight forty-eight hour divisor shifting to a new method of computation whereby you use a different divisor in each week?

A Yes, sir, if it was clearly a fluctuating weekly hours.

Q Now, in your view, whether a man complies with the wage and hour Act, would depend on which side of the line he would deem the particular employment exactly to fall on?

MR. SEARLS: I pray Your Honor's judgment.

THE COURT: Overrule the objection.

A Generally speaking, yes.

Q Now, is there anything in the Act or in the interpretative bulletin to advise an employer on which side of the line a particular employee is to fall, any method of computing the location of that line, so that an employer might determine the question?

A Nothing in the regulations.

Q I assume that you use your own personal judgment as to that matter?

A It is the application of the definition of regular hours, and fluctuating hours as contained in regulation part 516.4.

Q Now, is there any definition of fluctuating hours beyond that expression?

A No, sir.

Q No definition of regular hours beyond that expression, regular hours?

A No, sir.

Q So you read into the interpretation bulletin some definition, or some line of demarcation, and used that in the case of Bagwell, for instance, if he worked ten varying weeks you might call it fluctuating hours, whereas, if he worked only nine you might call it regular hours.

MR. SEARLS: I pray Your Honor's judgment on that.

THE COURT: The witness has indicated he is using his own judgment, I think he has the right to tell us how far he relies upon that judgment, since the law itself does not diagram this particular field, I think they are entitled to find out the limits in that particular field.

Q Now, the line between regular hours, and fluctuating hours might be crossed by you, by there being one added week of fluctuating hours in the whole program?

A That is possible, but not in the case of Bagwell.

Q I am getting at your method of computation. And a man could be put in jail for not knowing just when he approached that line, couldn't he?

MR. SEARLS: I pray Your Honor's judgment on that.

THE COURT: I sustain the objection to that.

Q Now, is your method of computation designed to arrive at the realities of the situation is that what is behind it, rather than just what the paper evidences of the situation might be, is that it?

A I do not thoroughly understand your question.

Q When you arrive at a regular rate of pay, is it your design to arrive, to act realistically, or to arrive at the actuality of the regular rate of pay, rather than at some bookkeeping figure?

A No, it is the intent to arrive at the true regular rate of pay.

Q Now, in arriving at that true regular rate of pay, do you take into consideration at all, time off that an employee has received with full pay in any prior week?

A No, it is based upon the hours worked during the week concerned.

Q In the single week?

A That is right.

Q Do you take into consideration any bonuses?

A No, sir.

Q Or regular vacations with full pay?

A In figuring the amounts due, I take into consideration the time worked during the particular week involved, and if a man were off on vacation during the week, naturally he did not work during that week.

Q Now, take Mr. Alderman, for instance, the evidence shows that he was sick eighty-three consecutive working days and received full pay throughout that period of time, and that that period was added to the usual two weeks vacation, and to isolated days of illness. Now, would you say that according to your theory that Mr. Alderman's regular rate of pay is just the same, we will say, in a week immediately following that sickness period, is just the same in that week as if he had been down there plugging and working those eighty-three days?

A That is right, for the week under consideration.

Q And that his regular rate of pay in that week is just the same as if he had been docked his pay those eighty-three days that he was sick?

A The week would be considered independent of any other week.

Q Now, if, following that week, that is treated independently, he was sick again, and

gone another two weeks with illness, and if, in the next following week he received a bonus as added compensation for his faithfulness and service, those facts also would not come into your computations at all in computing a regular rate of pay for the particular week in question?

A I don't know that I really understand your question.

Q If those things had happened after the week in question, as well as before, still they would have been ignored by you in computing this man's regular rate of pay in the week in question.

A That is right.

Q Is there any reason that you know of why you would not arrive at a more accurate estimate of regular rate of pay if you would take those things into consideration?

A If he is employed on a weekly basis, why we are concerned with only that particular week involved.

Q Wouldn't it be more accurate, possibly, or at least as accurate, to average, take your figure on an average over some period that includes the week in question, rather than to take simply the precise week in question?

MR. SEARLS: I pray Your Honor's judgment, isn't it a question of law?

THE COURT: Yes, the witness is bounden by the law, as is, of course, the parties to the suit, and I have heard his theory now, and we will hear your theory a little later and then the court will determine which is the proper theory. It doesn't get us anywhere to argue with a man as to what he might do. He said, as he conceives it, each week runs itself, if each fellow does not get his rest during that week, the law is concerned about it. If he doesn't get his pay during that week, the law is concerned about it. That is his position.

MR. PURNELL: It is not my desire to go further than to see exactly what his position is.

THE COURT: Well, you have made it pretty clear, that is what he thinks.

Q Now, the result of your method of computation, computing the regular rate of pay, we will take Olin Brown, varies each week in accordance with the number of hours that he worked that week, is that correct?

A I beg your pardon, I didn't get your question.

Q Take Olin Brown, you gave us your own computation as to him, for November 4, 1940, as I recall?

A Yes.

Q And in that week, he worked fifty-three and a half hours, and received $45.23, is that correct?

A That is right.

Q You divide fifty-three and a half into $45.23?

A No, sir, I divide fifty-three and a half into forty-five.

Q And you get eighty-four cents as his regular rate?

A That is right.

Q Now, take the week just before that, October 28, 1940, where he worked thirty-nine and a quarter hours and got $45.00?

A Yes, sir.

Q His regular rate of pay was, according to your computation, would be greater in that week, would it not?

A I didn't make the computation of the regular rate of pay in that instance, because it was unnecessary, inasmuch as he worked no overtime.

Q If you had made the computation, can you say you would have arrived at a figure greater than eighty-four cents?

A You are correct.

Q Similarly each week here, except where

the hours and wages were identical, you would arrive at a different rate of pay, would you not?

A Yes, sir.

Q Now, that is to say, as to a man like Olin Brown, the regular rate of pay, according to your computation, varies each week, from week to week?

A Yes, sir.

Q The more hours he works, the lesser his rate of pay?

A That is right.

Q The fewer hours he works, the greater his rate of pay?

A Yes, sir.

Q Now, let us check Olin Brown in two weeks that you have covered; the week of November 4, 1940, he got $45.23, didn't he?

A Yes, sir.

Q You say he should have received $5.38 more?

A That is right.

Q Now, add to $5.38, $45.23, and what do you get?

A $50.61.

Q That is what he should have received that week?

A That is right.

Q And he worked fifty-three and a half hours?

A Yes.

Q Now, let us take the week of April 24, 1939, which was another week covered by your evidence?

A Yes, sir.

Q And in that week he worked sixty-six hours?

A That is right.

Q And actually received $57.94?

A That is right.

Q You testified, I believe that he was paid $5.58 too much in that week?

A According to my calculation.

Q Now, will you subtract $5.38 from $57.94, what do you get?

A $52.36.

Q Therefore, in the week of April 24, 1939, according to your theory, he should have received $52.36?

A That is right.

Q According to the same theory, in the week of November 4, 1939, he should have received $50,61?

A That is right.

Q What is the difference between those two figures?

A $1.77, I believe.

Q Isn't it $1.75, to be accurate?

A That is right.

Q Now, on the week of April 24, 1939, he worked sixty-six hours?

A Yes, sir.

Q And in the week of November 4, 1940, he worked fifty-three and a half hours?

A That is right.

Q What is the difference in the hours under those two weeks?

A Twelve and a half hours.

Q Then in the week where he worked twelve and a half hours longer according to your theory, he was entitled to only $1.75 more pay?

A That is right.

Q That means fourteen cents an hour could legally have been paid him, if you added twelve and a half hours of overtime?

A If it figures that, yes.

Q According to your theory, is that correct?

A Computations were not made on the basis of hours in excess of variable hours.

Q I am asking you now, whether that is the result of your computation?

A That is the result of my computation.

Q Now, I will ask you if this is also a result of your computation; suppose an employer works two men, he works one of them forty hours in one week and the other he works fifty hours, then in some other week he works the same two men, but he works each of them forty-five hours; now, is it not a fact, according to your computation, that in the first week, where one worked fifty and the other forty, the employer would pay less than he would in the week where they worked forty-five is that the result of your method of computation?

A If the weekly wage is the same, he would pay the man who worked fifty hours total.

Q Well, let us take a man, if you don't mind doing figuring, let us take the man who gets forty-five dollars a week, and he works forty-five hours as his work week?

A Yes.

Q Now, his regular rate, then, is $1.00, according to your computation?

A That is right.

Q His overtime rate is $1.50?

A That is right.

Q And for the forty-five hours that he worked, he would be entitled to forty dollars plus $7.50, wouldn't he?

A Yes.

Q Making $47.50?

A That is right.

Q Now, suppose two men work at that schedule for a week, the employer owes twice $47.50, does he not?

A Yes, sir.

Q That is $95.00?

A Yes, sir.

Q Now, take some following week, and this

same man who works the forty-five hours schedule at $45.00, works fifty hours this week?

A Yes, sir.

Q His regular rate, as you compute it, drops to ninety cents, doesn't it?

A That is right.

Q And his overtime rate drops to $1.35, doesn't it?

A That is right.

Q And he should receive for the fifty hours of work, $49.50?

A That is right.

Q Now, take the other man, this week he worked only forty hours, you compute his regular rate at $40.00, at a dollar an hour, I presume?

A No, he gets $45.00 a week.

Q He has been getting $45.00 a week, but he only worked forty hours of the time he was entitled to for the forty hours?

A If he was hired on a weekly basis, $45.00 per week, even though he didn't work the excess, he would probably be paid $45.00.

Q That is $45.00, to be added to $49.50, isn't it, for the two men?

A Yes, sir, in that week.

Q And the two men together, then, in that week, get $94.50?

A That is right.

Q Now, the two men in the prior week when each worked forty-five hours, would be entitled to $95.00, wouldn't they?

A That is right.

Q So the employer owes less by working one man forty hours and another man fifty hours, as you compute it, than he would by working both men forty-five hours, doesn't he?

A Yes.

Q And that difference would increase as you increased the length of time overtime, as to the one man who worked overtime, wouldn't it?

A That is right.

Q If you work the man sixty hours, the difference between the cost to the employer of the two men would be greater, the difference would be greater, than the difference it shows from the computation that you have just made?

A Yes, sir, it would.

Q And the result is that the employer pays less, and the employee becomes entitled to less if he works very many, many overtime hours than if he worked a moderate amount of overtime hours?

A Less per hour, yes, that is when they are on a weekly basis.

Q And the result is, according to your method of computation, that a man who works overtime may be entitled to $1.50 for the first overtime hour, and only $1.40 for the next overtime hour, and $1.30 for the next overtime hour?

A You mean in different weeks?

Q No, in the same week. If he works one hour of overtime, your computation means that he may be entitled to $1.50, we will say, whereas, if he works two hours of overtime, he may be entitled only to $1.40 for each hour?

A Yes, sir, that is right.

Q And three hours, and four hours, and five hours, and so on?

A Yes, sir.

Q And mathematically you can reach the point where he works so many hours that he is entitled to nothing?

A Mathematically, perhaps.

Q Of course, there are only twenty-four hours in a day, but theoretically he would approach infinity, and the longer he worked, the less he would be entitled to per hour?

A No, because the week only has one hundred and sixty-eight hours in it.

Q Limited by the length of the week only?

A Yes, sir.

Q Now, does your method of computation take into consideration at all what the employer and employee may have done among themselves in the way of bargaining as to what these rates shall be?

MR. SEARLS: I pray Your Honor's judgment, that is a question of law, the effect of any bargaining they may have gone into.

MR. PURNELL: I will not pursue that.

Q The result of your computation is, that a man in your position, we will say, investigator, who goes into the office of an employee to check to see whether that employer has complied with the law, must make a separate computation as to each single week, as to each single employee, except when the weeks run so uniform that he can use as a rule of thumb, so to speak, computation in one week as applying also to some different week?

A. When they are on a salaried basis, that is true.

Q Just one other question. Is there anything in your computation or in the interpretative bulletin that controls your computation—which says that an employer cannot pay double time for overtime?

A No.

Q Or double time for overtime in one week, and time and a half for overtime in some different week?

A I believe it says it shall be at least one and a half times the regular rate of pay.

Q Then there is not anything that prevents paying double time in one week and time and a half in another week, if you never go below time and a half, in your method of computation.

MR. SEARLS: We get into legal questions again.

THE COURT: Yes, they are illustrations

that do not need illustrating, the law says time and a half. If a man wants to pay double time, that is his business.

MR. PURNELL: That is all.

MR. SEARLS: That is all.

PLAINTIFF RESTS

G. B. DEALEY,

A witness for the defendant, being first duly sworn, examined in chief by Mr. Purnell, testified as follows:

Q You are Mr. G. B. Dealey, Chairman of the Board of the A. H. Belo Corporation?

A Yes, sir.

Q Mr. Dealey, when was the A. H. Belo Corporation organized, or rather, tell us very briefly the facts with respect to the date of origin, date of changes in ownership, and then the present ownership of the A. H. Belo Corporation.

THE COURT: I want to know why that is necessary, no issue about that.

MR. PURNELL: Your Honor please, we are making a record here.

THE COURT: That is why I don't want to put into it anything that is not necessary.

MR. PURNELL: With respect to the interstate commerce point, we think that will not be a point to be argued elaborately, but we desire to show briefly the Texas character of the News, with its history, and that its ambitions and functions have been identified with Texas as a state rather than with the country. We want to show the ownership of the stock and debentures of the News, is among those who are residents of Texas.

THE COURT: I don't think that has anything to do with the case, it just fattens the record unnecessarily, you can have your bill.

MR. PURNELL: We want to show from Mr.

Dealey one or two additional items that we think Your Honor will admit, we think are pertinent.

Q (BY MR. PURNELL) Mr. Dealey, will you state whether the relationship between the News Management and its employees, have been generally satisfactory and happy in the past years?

A Very much so.

MR. SEARLS: I pray Your Honor's judgment, I do not want to interrupt unduly.

THE COURT: I overrule the objection, this is an equity case, and it seems to me that it is all right, anyhow, I overrule the objection.

Q Mr. Dealey, I do not believe it has been brought out that the News carries group life insurance at its own expense on the lives of its employees?

A Has done that for many years.

Q Will you state whether that is a fact?

A It has done that for many years, after a person has been in the employ of the News for six months, he gets his minimum policy, and it grows as he stays in the business until after he has been with us twenty-one years, he gets a policy of $2,500.00. Last year, we paid out on that account, or rather the insurance company paid out on that account some fourteen or fifteen thousand dollars to people who had died during the year.

Q Now, Mr. Dealey, has any employee of the News ever expressed any dissatisfaction to you, or to the other members of the executive staff, so far as you know, with respect to arrangements now in effect as to wages and hours?

A I have never heard of it.

Q Will you say whether the total payroll of the News this year, or in 1940, is greater than the payroll in the period immediately prior to the going into effect of the Act, in October, 1938?

A The payroll for October, 1938 was $17,-

909.40, the payroll for October 21, 1940, was $19,018.09, a weekly increase of $1,108.69.

Q Now, will you say that that weekly increase is attributable in part at least, to raises of compensation to employees since earlier days?

A Certainly, in part.

MR. SEARLS: I pray Your Honor's judgment.

THE COURT: Overrule the objection.

Q Mr. Dealey, will you state what the attitude of the News has been, as to its employees, with respect to its efforts to better their working condition, and its efforts in behalf of their welfare?

A Well,—

MR. SEARLS: Your Honor please, I do not want to object to everything, but we are getting very far afield here.

THE COURT: I think that is going too far, yes.

MR. PURNELL: We will not pursue that.

MR. PURNELL: That is all, Mr. Dealey.

MR. SEARLS: No questions.

THE COURT: I might say here, I don't know whether it makes any difference, but certainly if there was a case here where there was some man who was grinding down his employees, if I may use the phrase that has already been used, sweating them out and paying them nothing, it would certainly be interesting to the chancellor to hear it, and I think the government would seek to let us hear it, but here an employer wishes to show that it is all the other way, and the government objects to that, the court sustains the objection.

ROBERT W. FINKLEA

Being first duly sworn, examined in chief by Mr. Purnell, testified as follows:

Q What is your name?

A Robert W. Finklea.

Q You are a reporter for the Dallas News?

A Yes, sir.

Q You are a defendant in this suit as representative of the employees as a class, are you not?

A That is correct.

Q Mr. Finklea, did you sign one of the employment contracts with the News specifying your wages?

A I believe I signed two of them, I am not quite sure.

Q Now, when you signed those contracts, was any pressure put on you, brought to bear on you, or any inducement or influence of any character, to sign those?

A No, sir.

Q As far as you know, have the contracts with you been satisfied one hundred percent in all payments that have been made to you for wages?

A Yes, sir, they certainly have.

Q Do you know what the attitude of the News employees generally is, as to their satisfaction with the present method of payment of employees?

A I have never heard a complaint about that particular method.

Q Have you heard the opposite of complaints?

A Yes, sir, I have heard quite a number of them remark that they were satisfied with it.

Q Did you have occasion to act at all in obtaining the signatures of News employees to a paper for filing in this court expressing that satisfaction?

A Yes, sir.

Q Did the employees who signed that paper do it willingly, of their own accord and free of

any influence or intimidation or threats of any character?

A That is absolutely correct.

MR. SEARLS: No questions.

MISS RUTH BUCKNER,

Being first duly sworn, examined in chief by Mr. Purnell, testified as follows:

Q Your name is Ruth Buckner?

A That is right.

Q You are secretary for Mr. Estes, in the circulation department?

A Yes, sir, circulation manager.

Q How long have you been with the News?

A I will be with the News twenty-four years the 18th of next July.

Q Do you know the attitude of the News employees as to the present arrangements for wages?

A They are more than satisfied, in fact, they always say it is the best place to work they could ever possibly find.

Q Do you know of any dissatisfaction effecting any single employee, with the present arrangement?

A Not a one.

Q Did you act at all in handing around a paper to be signed by employees expressing that satisfaction, for filing in this court?

A Yes, sir, I did.

Q Was that paper signed by the employees of their own free will?

A Gladly, men who even worked at night and were not there in the daytime got up an extra hour earlier so they could come down and sign it because they felt they wanted to have their name on the list, it was absolutely voluntary.

Q Did you sign a wage contract with the News?

A Yes, sir, I did.

Q Specifying your hours?

A Yes, sir.

Q Your rate of pay and minimum guaranteed sum?

A Yes, sir.

Q Did you read it before you signed it?

A Absolutely.

Q Was any pressure brought to bear as to your signature as to that paper?

A None whatever.

Q Has that contract been fulfilled one hundred percent in all payment of wages to you?

MR. SEARLS: I pray Your Honor's judgment, isn't that a question of law?

THE COURT: I think it is admissible, I overrule the objection.

A I would say in my case it has been fulfilled about two hundred and fifty percent, because I was ill a great deal last year, and I never missed getting my pay check a single week.

CROSS EXAMINATION

BY MR. SEARLS:

Q You are one of the employee defendants here, are you not?

A That is right.

Q When did you first learn that you were to be named as a defendant in this suit?

A In July.

Q From whom did you learn it?

A I was served with a paper.

Q You hadn't heard it before?

A No, sir, I was on my vacation.

WHEREUPON BOTH SIDES CLOSED

IN THE
DISTRICT COURT OF THE UNITED STATES
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

A. H. BELO CORPORATION
vs.
G. C. STREET, JR., ET AL
No. 301 Civil

PHILLIPS B. FLEMING, ADMINISTRATOR WAGE AND HOUR DIVISION
vs.
A. H. BELO CORPORATION
No. 308 Civil

COURT'S ORAL OPINION

February 4, 1941.

THE COURT: On July 26, 1940, Belo Corporation filed a suit against Street, Truly, Finklea and Buckner, wherein a declaratory judgment was sought and suggested that Defendant Street claimed to be a representative of employees. The court, after having heard the pleadings and the views of the parties with reference to that suit concluded that the defendant Street could act both as an official of the wage and hour department, and individually, and retained the suit against the motion to dismiss, which was based upon the fact that the Administrator was not a party, on the ground that Mr. Street could become the representative plaintiff for dissatisfied employees or complaining employees, or of employees. A. H. Belo Corporation vs. Street, 35 F. (2) 430. That authority is now challenged by the government by the mere statement that Street has no authority to sue, either as an official or as a private citizen. The challenge is merely offered, there is nothing offered to support it. The law says that he, or, anyone else, can appear as a private citizen, as a representative of the employees.

After the suit was filed, and retained by the court upon a hearing, the Administrator filed suit No. 308,

against the Belo Corporation seeking an injunction against that corporation continuing its manner of paying and complying with the Wage-Hour Act. Suggestions were made with reference to a consolidation of the two causes and to a dismissal of one of them, and the idea that the declaratory judgment was not necessary, since a suit raising the identical point had been filed. The court thought that since it was of the view that Mr. Street could appear in his capacity as a private citizen to represent the employees, that the suggestion to try together should be favorably acted upon, but that there would continue to be two suits. That program has been followed, and testimony was first offered with reference to the claim of the department, that there was a complaining employee. The testimony shows indisputably and it has not been disputed, that the Department so claimed, but declined to disclose the name of such employee. A rather unusual procedure, but that is the procedure that the Department chose to follow. It either had such complaint or did not have, if it had such a complaint, it should be disclosed to the court. If it had such a complaint, it had a right to appear for that complainant, or any others, so we are met on the threshold of the appeal for equity by the failure of the government to disclose in good faith the ground of its activity, if it was necessary for it to have a ground other than the law itself, which the government is charged with enforcing.

Upon that particular feature, the court finds that there was no justification for that claim by Street or by the Department. That if there had been any such complaint, that it was the duty to disclose it to the citizen so that it could be remedied. We do not fix traps for people, and the chancellor cannot approve a course of that sort, and I think it should be so recognized.

The second suit offers considerable difficulty. Fine counsel here have exposed their views with reference to this Act. I have not had the benefit, if there is such benefit, of the discussions in the committee by the Congress when this act was under consideration, but I can-

not conceive of a law which, because it is a law, becomes universal in its application, that would unsettle amicability between employer and employees by interfering with their agreement, provided such agreement is equal to, or, in excess of the legal requirement with reference to pay. That was the reason for the statute. In order to have those of us who work for what we get commensurately paid the Congress thought that the fixing of a minimum wage would result in a better situation. That minimum wage, of course, does not preclude higher wages than the minimum wage, and there is not effort in this case by the employer to bind the employee to the legal minimum wage; on the contrary, it never has paid less than the minimum wage to its employees, with the few exceptions of some office boys, I think we may say.

The testimony shows that all of the employees, after the passage of the act, as was true before the passage of the act, received larger sums than the minimum wage law requires employees to receive. But it is contended by the government that when an employer and an employee make an agreement for a higher wage, that that higher wage which includes larger payments, must be used in figuring the overtime of such employee, if and when such employee works overtime. It must be borne in mind that this statute does not prevent overtime. It does not say that a full-grown man or woman employee shall not work overtime. It does not say that they shall not work more than so many hours, it merely pretends to be and is a statute against less than a minimum wage.

Now, Mr. Searls is correct in saying that the statute prohibits a rate less than one and one-half times the regular rate, but the statute then continues, "at which he is employed." So, while Congress struck down the right of an employee to contract for less than a minimum wage, it did not strike down the right of the employee and the employer to contract with reference to the wages which are in excess of minimum wages, and that is the way these employees have done.

I don't know that the court is concerned with this, but when we find that a certain construction of a statute

results in a clumsy, interminable effort to find out what it means, or, to figure, and the government has a right to go and figure, even to go into the office of the employer and find out whether the employer is treating his employee correctly or not, if and when that results, in an almost endless burden, to seek to put into effect a plan that has been detailed to the court, and which disappears if carried to excessive length, I cannot believe that that construction should be indulged in. It emasculates the right of contract. It emasculates the fullness of the meaning of the word employee. It makes vassals of employee and employer and leaves us hanging by the thumbs at the mercy of the construction of the government as to what we mean when we contract. The government merely says to us, "don't you employ a man and pay him less than this amount." Pay him all the more you can. This court held that in a very interesting case a year or two ago, and that is correct. You do not hold the employee down to any figure, you let him go and get all he can, but he certainly has the right and certainly is free to bargain with his employer as to what he shall get, provided he does not go lower than the law. The law is universal but was directed at an evil. It was not intended to punish the good—or to enslave the free.

These two suits spark from a clash in systems. Neither is perfect. One fixes the independent week for the sine quo non. The other fixes the will of the contracting parties, provided, such will is above the denials of the law, as the summon bonum. One includes the right to say when payrolls shall be made. The other views the regularity of pay checks as the most important. One is cumbersome and irregular. The other is simple and regular. One is the child of unauthorized regulation. The other is the child of liberty. One deals only in dollars and cents. The other with happiness of employer and employee, vacations, pay when sick, or, absent, as well as with dollars and cents. Neither system is fixed by statute. Since the citizen is free to keep the law by going in any direction he chooses, he may not be compelled to forego that right.

Upon the other question of interstate commerce, I do not see any more logic in that contention of the defendant, than there is in the contention of the plaintiff as to the figuring of the wage and hour. Of course, the News is engaged in interstate commerce. It sends its papers everywhere. It receives supplies and news from abroad. It is a great institution. Radio is interstate commerce, that has been decided long ago by this court at Abilene, when the radio cases first came up, and it never has been questioned that I know of.

So, I think the decree is and should be that a declaration go in 301 for the plaintiff, as the court understands it here, for the method followed by the complainant in that case and that it should not be interfered with by Street. And that as to No. 308, the bill be dismissed.

Exceptions, of course, may be noted in the decree which is to be approved by the parties as to form.

FINDINGS OF FACT.

I find the following facts:

1.

That there has been no violation of the wage and hour statute by the A. H. Belo Corporation.

2.

That all of its employees have been paid in excess of the requirements of the wage and hour act.

3.

That the regular wage upon which overtime or time and a half has been figured in each instance is the regular wage that the employee and employer had contracted for, and that such regular wage is in excess of the legal minimum wage.

4.

That defendant Street in cause 301 has a statutory right to individually appear for any employees who may see fit to so call him.

CONCLUSION OF LAW

As conclusions of law, I find as indicated in the foregoing opinion and that the decree must go for the plaintiff in 301 and against the plaintiff in 308.

We, T. C. IRBY and DENIS DINEEN, certify that during the trial of the above styled and numbered cause, we were the regularly appointed and qualified shorthand reporters; that we took shorthand notes of the proceedings upon said trial, and have transcribed the same as shown by the above and foregoing 190 pages, and that said transcript is true and correct.

T. C. Irby
Denis Dineen
Shorthand Reporters

PLAINTIFF'S EXHIBIT NO. 1.

IN THE
DISTRICT COURT OF THE UNITED STATES
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PHILIP B. FLEMING, ADMINISTRATOR of the WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, Plaintiff, vs. A. H. BELO CORPORATION, Defendant.	CIVIL ACTION No. 308
A. H. BELO CORPORATION Plaintiff vs. G. C. STREET, et al, Defendants	CIVIL ACTION No. 308

STIPULATION

It is hereby stipulated and agreed by and between the parties in the above styled cases, without waiving the

right to introduce additional testimony upon the trial of said cases as to subjects covered herein as well as all other subjects, and further without waiving the right to object to the introduction of all or any part of this stipulation as irrelevant or immaterial to issues arising in above styled causes, as follows:

I.

That representatives of the Wage and Hour Division have made transcriptions of the wages paid to and hours worked by representatives of the A. H. Belo Corporation; that the workweeks covered by said transcriptions are shown therein by the dates on which said workweeks ended; that the employees for whom transcriptions have been made are as follows:

Anderson, Cyrus Cecil
Bagwell, O. L.
Bates, Byron
Batts, Audrey
Brewer, J. L.
Burleson, Roosevelt
Conkle, Ray
Crannell, K. B.
Crume, E. Paul
Eastus, Harrill
Fair, Nathan
Geiser, G. B.
Greeley, Joe A.
Jones, J. Grover
Julian, L. F.
Lewis, Kay
Lockart, J. E., Jr.
Lovell, Helen McCune
Martin, D. W.
Mills, Clifton B.
Moffett, Ruth
Monroe, B. C.
Montigue, Robert
Moore, J. A.
Morrow, Hal
Newman, John
Prasifka, Charles
Simmons, T. F.
Snodgrass, William
Vickers, Bernice
Walker, Early
West, Richard
Wilson, Chas. M.

Alderman, James
Armentrout, Chas. D.
Boyce, Velma
Brown, Olin
Crowdus, Mary Louise
DeHay, Teddy P.
Ellis, William C.
Hartzell, Cecil I.
Kuehn, Arthur C.
Martin, Eudell
Martin, Eugene Stanley
Raines, James Orville
Sharpe, T. W.
Thompson, W. Hal
Wicker, J. L.

That, as to these transcriptions of hours and wages, the best evidence rule is waived for the purposes of the above named causes, and that in the trial of either or both of said causes, these transcriptions may be put in evidence in the same manner, on the same conditions, and with the same effect as the original time and payroll records of said A. H. Belo Corporation might be used, all subject to the terms and conditions of this stipulation.

II.

That the copies of the letters addressed by the A. H. Belo Corporation to the employees, relating to their wages, and acknowledged by said employees, which were made by representatives of the Wage and Hour Division and checked by representatives of the A. H. Belo Corporation, may also be put in evidence in the said causes in the same manner, on the same conditions, and with the same effect as the original letters issued by the A. H. Belo Corporation, and for the purposes of the above-named causes the best evidence rule is waived, all subject to the terms and conditions of this stipulation.

III.

That the copy of the instructions on the keeping of time cards and records issued by the A. H. Belo Corporation, dated October 28, 1938, and signed by Mr. G. B. Dealey, and the copy of the instructions issued to department heads by the A. H. Belo Corporation, dated October 19, 1939, also signed by Mr. G. B. Dealey, which copies were made by representatives of the A. H. Belo Corporation and delivered to representatives of the Wage and Hour Division, may be put in evidence in the above named causes in the same manner, on the same conditions, and with the same effect as the original instructions issued by said A. H. Belo Corporation, and for the purposes of the above named causes the best evidence

rule is waived, all subject to the conditions of this stipulation.

Dated this 3rd day of February, 1941.

Attorneys for A. H. Belo Corporation
Locke, Locke, Dyer & Purnell

Attorneys for Philip B. Fleming,
Administrator, Wage and Hour Division,
United States Department of Labor

Gerard D. Reilly

Gerard D. Reilly
Solicitor

Irving J. Levy

Irving J. Levy
Assistant Solicitor

Llewellyn B. Duke

Llewellyn B. Duke
Regional Attorney

George B. Searls

George B. Searls
Senior Attorney

Robert W. Richards

Robert W. Richards
Associate Attorney

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2.

Sheet_____

WAGE COMPUTATION SHEET

File _____

Name of employee Cyrus Cecil Anderson Date _____

Address _____ Occupation Payroll Clerk (Machine _____

Basis of payment _____ Business Dept. _____

Establishment _____ Address _____

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-5-38											40.00			
10-10	(No time record)										40.00			
10-31								50-1/2			2.50 40.00	Extra for Sunday work as shown		2.50
11-14								47			6.50 40.00			
12-26								37-1/2			2.50 40.00			
1-9-39								46-1/2			2.50 40.00	Sunday work		
2-27								42-1/2			2.50 40.00			

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4-17							47-1/2			2.50 40.00			
5-29							11-1/2			2.50 40.00			
6-12							47-1/2			2.50 40.00			
7-31							51-1/2			2.50 40.00			
8-28							49-1/2			2.50 40.00			
9-11							48-1/2			2.50 45.00			
10-23							54			2.50 45.00			
11-6							48			2.50 45.00			
12-11							48			2.50 45.00			
1-15-40							47-1/2			2.50 45.00			
2-26							24			45.00			

over

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
3-11								47-1/2			2.50 45.00			
4-29								51			2.50 45.00			
5-6								47-1/2			2.50 45.00			
6-3								47-3/4			52.50			
7-1								49-1/2			52.50			
8-5								45			"			
9-10								48			"			
11-21								33-1/2			"			

Amount due for weeks indicated above

Inspector Computed by R. T. C. M. Reviewed by

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U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____
File _____
Date _____

Name of employee Cyrus C. Anderson
Address 6016 Goliad Occupation Payroll Clerk
Basis of payment
Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
7-1-40								49-1/2			52.50			
8-5								45			"			
9-2								41-1/2			"			
10-7								45			"			
10-21								33-1/2			"			
10-28								46			"			
11-4								44-1/2			"			
11-11								46			5.00 – 52.50	working on election returns		
12-2								41			52.50			

Amount due for weeks indicated above

Inspector Computed by R. T. C. M. Reviewed by

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Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

Sheet _____

WAGE COMPUTATION SHEET

File 42-257

Name of employee O. L. Bagwell Date 9-25-40

Address 4931 Alcott St. Occupation Bldg. Maintenance (nightwatchman)

Basis of payment Weekly

Establishment A. H. Belo Corporation Address Dallas, Texas 34

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								50			26.75			53-1/2
11-14-38								48			"			55
12-26-38								"			"			
1-9-39								"			"			
2-27-39								"			"			
3-6-39								"			32.00	(14.96)		67
4-17-39								"			32.00			
5-29-39								"			"			
6-12-39								"			"			
7-31-39								36			"			82

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8-26-39								48			0			67
9-11-39								"			"			
10-23-39								"			"			
11-6-39								"			"			
12-11-39								"			"			
1-15-40								"			"			
2-26-40								"			"			
3-11-40								"			"			
4-29-40								"			"			
5-6-40								"			"			
6-3-40								"			"			
7-1-40								"			"			
8-5-40								"			"			
9-5-38	No time records										26.75			
10-10-38	"	"	"								26.75			
											AMOUNT DUE FOR WEEKS INDICATED ABOVE			

Inspector Computed by R. T. C. M. Reviewed by

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Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

Sheet _____

WAGE COMPUTATION SHEET

File _____

Name of employee O. L. Bagwell Date _____

Address 4931 Alcott Occupation Night Watchman

Basis of payment

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-2-40								12			32.00			2.66
10-7-40								48			"			67
10-21-40								"			"			
10-28-40								"			"			
11-4-40								"			"			
11-11-40								"			"			
12-2-40								"			"			

Amount due for weeks indicated above

200

Form AD-56
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

Sheet

WAGE COMPUTATION SHEET

File 42-257

Name of employee Byron Bates

Date 9-25-40

Address

Occupation Mail room employee

Basis of payment $14.50 weekly to 11-6-39; $15.30 to 8-5-40, thence $16.50

Establishment A. H. Belo Corporation Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								48			14.50			
11-14-38								48			1.00 – 14.50	working on election returns		
12-26-38								36			14.50			
1-9-39								48			14.50			
2-27-39								48			14.50			
3-6-39								48			14.50			
4-17-39								48			14.50			
5-29-39								48			14.50			

over

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(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
6-12-39								48			14.50			
7-31-39								48			14.50			
8-28-39								48			14.50			
9-11-39								48			14.50			
10-23-39								48			14.50			
11-6-39								48			15.30			
12-11-39								48			15.30			
1-15-40								48			15.30			
2-26-40								48			15.30			
3-11-40								46			15.30			
4-29-40								48			15.30			
5-6-40								47			15.30			
6-3-40								44			15.30			
7-1-40								9	vacation		15.30			
8-5-40	4							48			14.50			
9-3-38	No time record										14.50			

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Form AD-46
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

Sheet _____

WAGE COMPUTATION SHEET

File _____

Name of employee Byron Bates Date _____

Address 3327 Gibsondell Occupation Mail room

Basis of payment

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-2-40								48			16.50			
10-7-40								48			16.50			
10-21-40								46			16.50			
10-28-40								48			16.50			
11-4-40								48			16.50			
11-11-40								48			2.10 – election returns 16.50			
12-2-40								48			16.50			

Amount due for weeks indicated above

Inspector Computed by

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U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet_____

File 42-257

Name of employee Miss Audrey Batts Date 9-25-40

Address 5825 Tremont St. Occupation P.B.X. Operator

Basis of payment $18.00 Weekly for 44 hour week

Establishment A. H. Belo Corporation Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38									44		18.00			
11-14-38									44		18.00			
12-26									44		18.00			
1-9-39									44		18.00			
2-27									44		18.00			
3-6									44		18.00			
4-17									44		18.00			
5-29									44		18.00			

over

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(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
6-12									44		18.00			
7-31									44		18.00			
8-28									44		18.00			
9-11									44		18.00			
10-23									44		18.00			
11-6									44		18.00			
12-11									44		18.00			
1-15-40									44		18.00			
2-26									44		18.00			
3-11									44		18.00			
4-29									44		18.00			
5-6									44		18.00			
6-3									44		18.00			
7-1									44		18.00			

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| | | |

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____
File _____
Date _____

Name of employee Audrey Batts
Address 5825 Tremont Occupation P.B.X. Operator
Basis of payment
Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment.	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-2-40								44			18.00			
10-7								44			"			
10-21								44			"			
10-28								44			"			
11-4								44			"			
11-11								44			"			
12-2								44			"			

Amount due for weeks indicated above

Inspector Computed by R. T. C. M. Reviewed by

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(7-40)

WAGE COMPUTATION SHEET

File 42-257

Name of employee J. L. Brewer Date 9-25-40

Address 1310 Harlendale Occupation Bookkeeper

Basis of payment Weekly Wage for various hours

Establishment A. H. Belo Corporation Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								47 2			2.50 20.00	2.50 20.00	Extra for Sunday work	2.50
11-14								47			2.50 20.00	2.50 20.00		
12-26								38			2.50 20.00	2.50 20.00		
1-9-39								63		10.00 2.50 20.00	10.00 2.50 20.00	10.00 2.50 20.00		
2-27								47			2.50 20.00	2.50 20.00		

over

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(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
3-6								47			2.50 23.00	2.50 23.00		
4-17								47			2.50 23.00	"		
5-29								47			2.50 23.00	"		
6-12								47			2.50 23.00	"		
7-31								47			2.50 23.00	"		
8-28								47			2.50 23.00	"		
9-11								47			2.50 23.00	"		
10-23								47			2.50 23.00	"		
11-6								40			2.50 23.00	"		

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12-11								47			2.50 23.00	"			
1-15-40								47			2.50 23.00	"			
2-26								51			2.50 28.00	2.50 28.00			
3-11								47			2.50 28.00	"			
4-29								54			2.50 28.00	"			
5-6								47			2.50 28.00	"			
6-3								44			2.50 28.00	"			
7-1								52			2.50 28.00	"			
8-5								49			2.50 28.00	"			
9-5-38	No time records										20.00				
10-10-38	"	"		"							20.00				

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector Computed by R. T. C. M. Reviewed by

From AD-26
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____

File _____

Date _____

Name of employee J. L. Brewer

Address 1311 Harlandale Occupation Bookkeeper

Basis of payment

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-2-40								53-1/4			2.50 28.00	2.50 28.00		
10-7								41			2.50 28.00	2.50 28.00		
10-21								36-1/2			1.00 2.50 28.00	1.00 — 2.50 28.00	election returns	work
10-28								40			2.50 28.00	2.50 28.00		
11-4								45			2.50 28.00	2.50 28.00		

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												1.00	1.00	—election returns		
11-11								45-1/2				2.50 28.00	2.50 28.00		wor	
12-2								46				2.50 28.00	2.50 28.00			
												AMOUNT DUE FOR WEEKS INDICATED ABOVE				

Inspector Computed by R. T. C. M. Reviewed by

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

Sheet_____

WAGE COMPUTATION SHEET

File 42-257

Name of employee Roosevelt Burleson Date 9-5-40

Address 2806 Clevan Occupation Paper Handler

Basis of payment

Establishment A. H. Belo Corp. Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
WORK WEEK ENDING	HOURS WORKED							TOTAL	HOURLY RATE OF PAY	TOTAL WAGES DUE	TOTAL WAGES PAID	UNDER-PAYMENT	ILLEGAL DEDUCTIONS	TOTAL DUE WORKER
	S	M	T	W	T	F	S							
8-6-38								48			15.00			
9-17								"			"			
10-8								56			17.50			
10-29								7 48			2.80 15.00			
11-5								48			15.00			
12-10								44			"			
1-7-39								48			"			
1-21								"			"			
2-26				Sick				40			"			

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7-9							"			"			
10-8							"			"			
10-29							47			"			
12-17							45			"			
1-28-40							"			"			
4-7-40							45-1/2			"			
6-9							45			"			
8-4							46			"			
9-2							53			17.50			
10-7							44			15.00			
10-21							46			"			
10-28							54			18.30			
9-5-38	No time record									15.00			
10-10-38	"	"	"							17.50			

over

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector Computed by R. T. C. M. Reviewed by

Form AD-36
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____

File _____

Name of employee Roosevelt Burleson Date _____

Address 3630 Spring Occupation Paper Handler

Basis of payment _____

Establishment _____ Address _____

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
11-4-40								53			17.85			
11-11-40								48			15.60			
12-2-40		Left		Employment							2.70			

Amount due for weeks indicated above

Inspector Computed by R. T. C. M. Reviewed by

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U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet_____

File 42-257

Name of employee Roy Conkle Date 9-25-40

Address Dallas, Texas Occupation Mail Room Employee

Basis of payment Weekly Wages - Various hours Worked

Establishment A. H. Belo Corpn. Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								44-1/2			25.40			
11-14								44-3/4			25.75			
12-26								44			26.65			
1-9-39								44-5/12			26.90			
2-27								44-1/3			26.80			
3-6								44-1/2			26.95			
4-17								44-1/4			26.70			
5-29								44			26.50			

over

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(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
6-12								44			26.50			
7-31								44			26.50			
8-28								44			26.50			
9-11								44			26.50			
10-23								43-3/4			26.50			
11-6								44-5/6			26.50			
12-11								46-1/6			26.50			
1-15-40								45-1/12			26.50			
2-26								45-5/12			26.50			
3-11								44			26.50			
4-29								44			26.50			
5-6								44-1/3			26.50			
6-3								44[1]			26.50			
7-1								44			26.50			

10-10-38	"		"		"						25.00			

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector Computed by R. T. C. M. Reviewed by

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____

File _____

Date _____

Name of employee Roy Conkle

Address Rt. #3, Mesquite Occupation Mail Room

Basis of payment

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-2-40								43-1/4			26.50			
10-7								40-5/6			"			
10-21								40-1/3			"			
10-28								40			"			
11-4								41			"			
11-11								42-1/3			"			
12-2								41			"			
													Amount due for weeks indicated above	

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WAGE AND HOUR DIVISION
(7-40)

WAGE COMPUTATION SHEET

Sheet
File
Date 11-1-40

Name of employee Kenlen Bates Crannell
Address 207 N. Marlborough Occupation Bookkeeping
Basis of payment
Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-5-38		No time record									60.00			
10-10		"		"		"					60.00			
10-31								48			60.00			
11-14								48			2.00 60.00			
12-26								44			60.00			
1-9-39								48			60.00			
2-27								48			60.00			
3-6								48			60.00			
4-17								48			60.00			
5-29								48			60.00			

over

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(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
6-12								48			60.00			
7-31								0	Sick		60.00			
8-28			Sick								60.00			
9-11								0	Sick		60.00			
10-23			"					24			60.00			
11-6			"					24			60.00			
12-11			"					24			60.00			
1-15-40			"					30			60.00			
2-26			"					35			60.00			
3-11			"					34			60.00			
4-29			"					40			60.00			
5-6			"					43			60.00			
6-3			"					40			60.00			

Amount due for weeks indicated above

Inspector Computed by R. T. C. M. Reviewed by

U. S. Department of Labor
Wage and Hour Division

Sheet

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Name of employee K. B. Crannell Date

Address 207 N. Marlborough Occupation Bookkeeping (Adv. Mats)

Basis of payment

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
7-1-40								42			60.00			
8-5								35			"			
9-2								42			"			
10-7								40			"			
10-21								42			"			
10-28								40			"			
11-4								40			"			
11-11								40			"			
12-2								40			"			
											Amount due for weeks indicated above			

Inspector Computed by R. T. C. M. Reviewed by

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Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

Sheet_____

WAGE COMPUTATION SHEET

File 42-257

Name of employee E. Paul Crume Date 9-26-40

Address 7310 Alice St. Occupation Reporter

Basis of payment Weekly Wage Scale Variable Work Week

Establishment A. H. Belo Corp. Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								54			27.50			
11-14								48			"			
12-26								"			"			
1-9-39								"			"			
2-27								"			30.00			
3-6								"			"			
4-17								"			"			

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| | | |

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____

File _____

Name of employee E. Paul Crume Date _____

Address 3431 Binkley Occupation Reporter

Basis of payment

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-2-40		Va	cat	ion				0			40.00			
10-7								43-1/2			"			
10-21								42			"			
10-28								41			"			
11-4								44-1/2			"			
11-11								43-1/4			"			
12-2								42 3/4			"			

over

Amount due for weeks indicated above

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U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

Sheet_____

WAGE COMPUTATION SHEET

File 42-257

Name of employee Harrill Eastus Date 9-6-40

Address 2511 Brooklyn Occupation Bldg. Maintenance & Paper Cutting

Basis of payment

Establishment A. H. Belo Corp. Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								48			15.00			
11-14-38								(18 (48			9.00 15.00			
5-29-39								45			18.00			
6-12-39				No Card				4			2.00 18.00	vacation 6 days		
8-28-39								45			18.00			
10-23-39								1 45			.50 18.00			
4-29-40								7-1/2 45			4.50 18.00			

over

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(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
5-6-40								45			18.00			
6-3-40								1 45			.60 18.00			
7-1-40								45			18.00			
8-5-40								40-1/2			18.00			
12-3-38								(8 (45 (12			(4.00 (15.00 (6.00			
9-9-39								20-1/4 41-1/4			(18.00 (10.13			
9-16-39								45 1			18.00 .50			
9-23-39								45.			18.00			
10-7-39								7-1/2 45			(3.00 (18.00 (3.75			
10-14-39								45			18.00			
10-21-39														

10-28-39							45			18.00			
11-4-39							2 45			1.00 18.00			
11-11-39		No Card					45			18.00			
12-9-39							45			18.00			
9-5-38		No Time Record								4.00			
10-10-38		No Time Record								25.50			
										AMOUNT DUE FOR WEEKS INDICATED ABOVE			

Inspector Computed by R. T. C. M. Reviewed by

From AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

Sheet_____

WAGE COMPUTATION SHEET

File _____

Name of employee Harrill Eastus Date _____

Address _____ Occupation Building Maintenance

Basis of payment _____

Establishment _____ Address _____

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
1-6-40								45 8			(18.00 (4.80			
1-27-40								45			18.00			
2-3-40								37-1/2 6			(18.00 (3.60			
3-2-40								45 3			(18.00 (1.80			
3-16-40								45			18.00			
3-23-40								45 4			(18.00 (2.40			
3-30-40								45 7-3/4			(18.00 (4.65			

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4-13-40								5			(3.00				
4-20-40								45 6			(18.00 (3.60				
4-27-40								45 7-1/2			(18.00 (4.50				
5-25-40								45 8			(18.00 (4.80				
6-8-40								45			18.00				
7-6-40								30 7-1/2			(18.00 (4.50				
8-10-40								45 3			.80 18.00				
8-17-40								45 14			(18.00 (8.40				
8-24-40								45 14			(18.00 (8.40				
9-2-40								13-1/2 45			8.10 18.00				
10-7-40								(8 (2-1/2 (44			(4.80 (1.50 (18.00				
10-21-40				Sick							18.00				

over

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-28-40								40			18.00			
11-4-40								46-1/2			18.00			
11-11-40								(4-1/2 (4 (46			(2.40 (2.70 (18.00			
12-2-40								34			18.00			
												Amount due for weeks indicated above		

Inspector Computed by R. T. C. M. Reviewed by

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

WAGE COMPUTATION SHEET

Sheet ____
File 42-257
Date 9-5-40

Name of employee Nathan Fair
Address 2709½ San Jacinto Occupation Paper Tender
Basis of payment
Establishment A. H. Belo Corp. Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
6-4-38								48			20.40			
8-13								"			"			
10-1								"			"			
10-8								56			23.80			
10-29								48			20.40			
11-5								"			"			
11-26								"			"			
12-24								"			"			
12-31								48			3.40) 17.00)	Split pay roll		

over

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(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
1-7-39								48			20.40			
2-26								"			"			
4-1								"			"			
4-30								"			"			
5-28								"			"			
7-2								"			"			
9-3								"			"			
10-1								"			"			
10-22								"			"			
10-29								"			"			
12-10								50-1/2			20.40			
12-17								49-1/2			"			
12-31								48			"			
1-7-40								"			"			

10-10-38			"		"						23.80		

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector Computed by R. T. C. M. Reviewed by

Form AD-56
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet_____

File 42-257

Name of employee Nathan Fair Date 9-5-40

Address 2709½ San Jacinto Occupation Paper Tender

Basis of payment

Establishment A. H. Belo Cor. Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
3-3-40								48			20.40			
4-28								48			20.40			
6-2								"			"			
9-1								48			20.40			
10-7								"			"			
10-21								"			"			
10-28								"			"			

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| | | |

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet_____

File _____

Name of employee_____G. B. Geiser_____ Date_____

Address_____ Occupation___Stereotyper_____

Basis of payment_____

Establishment_____ Address _____

(a)			(b) Union Overtime					(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Shifts		Worked					for...	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-8-39	Shifts 6	"	(7½	÷ O.	510 T.)	min.			Hours Total	Union Overtime Paid	$67.37			
10-15-39	6	"	(7½ (min.	plus O.		60 T.)					54.25			
10-22-39	5	"	7½ (30	plus min.		O.	T.)				44.62			
10-31-38								Shifts 5	37-1/2		43.75			
11-14-38								6"	45		52.50			

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8-28-39								5"	37-1/2		43.75				
4-29-40	(2 rates)								38-1/4	1.27	46.09				
5-6-40								5"	38-1/4	1.27	46.09				
6-3-40									43-1/4	3.08	48.90				
7-1-40									32-5/12	4.29	40.03				
8-5-40									38-1/4	1.27	46.09				
10-10-38											53.53				

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector Computed by R. T. C. M. Reviewed by

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet_____
File 42-257
Date 9-25-40

Name of employee Joe A. Greeley
Address 910 Church St. Occupation Building Operations-Elevator Nights
Basis of payment Weekly Wages- Variable Hours Worked
Establishment A. H. Belo Cor. Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								48			16.00			
11-14-38								48			16.00			
12-26-38								48			16.00			
1-9-39								48			16.00			
2-27-39								48			16.00			
3-6-39								48			16.00			
4-17-39								48			16.00			
5-29-39								48			16.00			
6-12-39								48			16.00			

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9-11-39								48			16.00			
10-23-39								48			16.00			
11-6-39								48			16.00			
12-11-39								48			16.00			
1-15-40								48			16.00			
2-26-40								48			16.00			
3-11-40								48			16.00			
4-29-40								48			16.00			
5-6-40								48			16.00			
6-3-40								48			16.00			
7-1-40								48			16.00			
8-5-40								40			16.00			
9-5-38	No time record										16.00			
10-10-38	"	"	"								16.00			
											AMOUNT DUE FOR WEEKS INDICATED ABOVE			

Inspector Computed by R. T. G. M. Reviewed by

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

Sheet_____

WAGE COMPUTATION SHEET

File _____

Name of employee Joe A. Greeley Date _____

Address 910 Church Occupation Elevator (Night)

Basis of payment

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
WORK WEEK ENDING	HOURS WORKED							TOTAL	HOURLY RATE OF PAY	TOTAL WAGES DUE	TOTAL WAGES PAID	UNDER-PAYMENT	ILLEGAL DEDUCTIONS	TOTAL DUE WORKER
	S	M	T	W	T	F	S							
9-2-40								48			16.00			
10-7-40								48			16.00			
10-21-40								48			16.00			
10-28-40								48			16.00			
11-4-40								48			16.00			
11-11-40								48			16.00			
12-2-40								48			16.00			

AMOUNT DUE FOR WEEKS INDICATED ABOVE

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U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____

File _____

Name of employee J. Grover Jones

Date _____

Address _____ Occupation _____

Basis of payment _____

Establishment _____ Address _____

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
								Shifts		paid	Union Overtime			
12-10-39								6		58.77	3.35 O.T.			
12-24-39								6		54.81	45 min. O.T.			
12-31-39								4		35.00				
12-22-40								5		45.62	30 min. O.T.			
12-29-40								5		44.48	25 min. O.T.			

Amount due for weeks indicated above

Inspector _____ Computed by R. T. C. M. Reviewed by _____

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Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____

File _____

Date _____

Name of employee L. F. Julian

Address _____ Occupation Stereotyper

Basis of payment _____

Establishment _____ Address _____

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
WORK WEEK ENDING	HOURS WORKED							TOTAL	HOURLY RATE OF PAY	TOTAL WAGES DUE	TOTAL WAGES PAID	UNDER-PAYMENT	ILLEGAL DEDUCTIONS	TOTAL DUE WORKER
	S	M	T	W	T	F	S							
10-8-39	Sh 6	ifts		Un	ion	Ov	erti me			paid $52.50				
10-15-39	6			10	min.	O.	T.			52.79				
10-22-39	5			no	O.	T.				43.75				
10-29-39	6			no	O.	T.				54.48				

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Computed by _____ Examined by _____ Reviewed by _____

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U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

WAGE COMPUTATION SHEET

Sheet_____

File 42-257

Name of employee Kay Lewis Date 9-25-40

Address Dallas, Texas Occupation Reporter

Basis of payment $35.00 Weekly Salary

Establishment A. H. Belo Cor. Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								48			35.00			
11-14								"			"			
12-26								"			"			
1-9-39								"			"			
2-27								"			"			
3-6								"			"			
4-17								"			"			
5-29								"			"			

over

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(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
6-12								48			"			
7-31								"			"			
8-28								"			"			
9-11								"			"			
10-23								"			"			
11-6								"			"			
12-11		Vacation						-0-			"			
1-15-40								48			"			
2-28								"			"			
3-11								"			"			
4-29								"			"			
5-6								"			"			
6-3								0	(no hours worked) (vacation)		"			
7-1								42			"			

9-26-38	No time records										35.00			
10-10-38	"	"		"							35.00			

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector Computed by R. T. C. M. Reviewed by

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet_____

File_____

Name of employee Kay Lewis Date_____

Address 612 N. Harwood Occupation Reporter

Basis of payment

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-21-40								42			35.00			
10-7								"			"			
10-21								"			"			
10-28								"			"			
11-4								"			"			
11-11								"			"			
12-2								"			"			

Amount due for weeks indicated above

248

Wage and Hour Division

File 42-257

Name of employee J. E. Lockart, Jr. Date 9-25-40

Address 3604 Lindenwood Occupation Bookkeeper

Basis of payment Weekly Salary - Variable workweek

Establishment A. H. Belo Corp. Address Dallas, Texas

(a) Work Week Ending	(b) Hours Worked S	M	T	W	T	F	S	(c) Total	(d) Hourly Rate of Pay	(e) Total Wages Due	(f) Total Wages Paid	(g) Under-payment	(h) Illegal Deductions	(i) Total Due Worker
10-31-38								41-1/2			25.00			
11-14								48			2.50 25.00	2.50 25.00	Extra for work 2.50	Sunday
12-26								41			2.50 25.00	2.50 25.00		
1-9-39								48			2.50 25.00	2.50 25.00		
2-27								49			2.50 25.00	2.50 25.00		
3-6								46			2.50 25.00	2.50 25.00		

over

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
4-17								51			2.50 30.00	2.50 30.00		
5-29								47			2.50 30.00	"		
6-12								47			2.50 30.00	"		
7-31								56			30.00	"		
8-28		VA	CA	TI	ON			8			2.50 30.00	"		
9-11								46			2.50 30.00	"		
10-23								43-1/2			2.50 30.00	"		
11-6								47-1/2			2.50 30.00	"		
12-11								48			2.50 30.00	"		
1-15-40								48			2.50 30.00	"		

250

3-11								42			2.50 30.00	"		
4-29								50-1/2			2.50 30.00	"		
5-6								38-1/2			2.50 30.00	"		
6-3								48			2.50 30.00	"		
7-1								53			2.50 30.00	"		
8-5								45			2.50 30.00	"		
9-5-38	No time record										25.00			
10-10-38	No time record										25.00			

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector Computed by R. T. C. M. Reviewed by

Form AD-36
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____

File _____

Date _____

Name of employee J. E. Lockart, Jr.

Address 227 N. Ewing Occupation Bookkeeper

Basis of payment

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-2-40								51			2.50 30.00	2.50 30.00		
10-7								46-1/2			2.50 30.00	2.50 30.00		
10-21								48-1/2			2.00 2.50 35.00	— election returns		
10-28								46			2.50 35.00	2.50 35.00		
11-4								43			2.50 35.00	2.50 35.00		

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AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector

Computed by R. T. C. M. Reviewed by

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

Sheet_____

WAGE COMPUTATION SHEET

File _____

Name of employee_____Helen Maureen McCune (Now married - Mrs. Maureen Lovell_____ Date _____

Address_____ Occupation___Foreign Advertising Dept._____

Basis of payment_____

Establishment_____A. H. Belo Corp._____ Address___Dallas, Texas_____

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-5-38											18.00			
10-10-38											18.00			
10-31-38									44		18.00			
11-14-38									44		18.00			
12-26-38									36		18.00			
1-9-39									45		18.00			
2-27-39									44		18.00			
3-6-39									44		18.00			

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6-12-39									44		18.00				
7-31-39									44		18.00				
8-28-39									44		18.00				
9-11-39									44		18.00				
10-23-39									44		18.00				
11-6-39									44		18.00				
12-11-39									30		18.00				
1-15-40									44		18.00				
2-26-40									44		18.00				
3-11-40									44		18.00				
4-29-40									44		18.00				
5-6-40									44		18.00				
6-3-40									41-1/2		18.00				

over

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
7-1-40								42			18.00			
8-5-40								8			18.00			
9-11-40								42			18.00			
10-21-40								41-1/2			18.00			
11-5-40											Not here			
											Amount due for weeks indicated above			

Inspector Computed by R. T. C. M. Reviewed by

WAGE COMPUTATION SHEET

Sheet
File
Date

Name of employee Helen McCune Lovell
Address 612 N. Ewing Occupation Foreign Advertising
Basis of payment
Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
7-1-40								42			18.00			
8-5-40								8			18.00			
9-2-40								41-1/2			18.00			
10-7-40								42			18.00			
10-21-40								41-1/2			18.00			
10-28-40								41-1/2			18.00			
11-4-40								37-1/2			18.00			
11-11-40								41-1/2			18.00			
12-2-40								41-1/2			18.00			

Amount due for weeks indicated above

Inspector Computed by R. T. C. M. Reviewed by

257

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2 (Continued)

WAGE COMPUTATION SHEET

Sheet _____
File _____
Date _____

Name of Employee D. W. Martin
Address 404 E. 10th St. Occupation Mail Clerk
Basis of payment Weekly Wages Variable Hours
Establishment A. H. Belo Corp. Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								42-1/2			11.00			
11-14								43[1]			11.00			
12-26								36			11.00			
1-9-39								42[1]			11.00			
2-27								42[2]			11.00			
3-6								42			11.00			
4-17								42			11.00			
5-29								42			11.00			
6-12								42			11.00			
7-31								42			11.00			

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8-28							42			11.00				
9-11							42			11.00				
10-23							42			11.00				
11-6							42			12.60				
12-11							42			12.60				
1-15-40							42			12.60				
2-26							46			15.30				
3-11							48			15.30				
4-29							48			15.30				
5-6							48			15.30				
6-3							45[2]			15.30				
7-1							44			15.30				
8-5			National Guard Service							15.30				
9-5-38		Not there												
10-10-38		No record of time								10.00 (first week employed)				

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector Computed by R. T. C. M. Reviewed by

Form AD-56
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

Sheet _____

WAGE COMPUTATION SHEET

File _____

Name of employee D. W. Martin Date _____

Address Fort Bliss Occupation Mail Boy

Basis of payment

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-2-40								45			15.30			
10-7								45			15.30			
10-21								45			1.00 15.30	election returns		
10-28								45			15.60			
11-4								45			15.60			
11-11								30			16.60	Paid full wk.	$1.00 Extra	
								Left employment 11-8					election	returns

Amount due for weeks indicated above

Inspector Computed by R. T. C. M. Reviewed by

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Form AD-46
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet_____

File 42-257

Name of employee Clifton B. Mills Date 9-25-40

Address 1711 Cockrell Street Occupation Power Dept. Employee

Basis of payments Wage Guarantee Weekly – Variable Hours Worked

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								48			37.50			
11-14								"			"			
12-26								16			"			
1-9-39								48			"			
2-27								"			"			
3-6								"			"			
4-17								"			"			
5-29								"			40.00			

over

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(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
6-12								"			"			
7-31								"			"			
8-28								49 2			"			
9-11								48			"			
10-23								"			"			
11-6								"			"			
12-11								"			"			
1-15-40								"			"			
2-26								"			"			
3-11								"			"			
4-29								"			"			
5-6								"			"			
6-3								"			"			
7-1								"			42.50			

8-5		No Card					?	(No time worked) (vacation)		42.50			
9-5-38		No time Record								37.50			
10-10-38		"		"		"				37.50			
												AMOUNT DUE FOR WEEKS INDICATED ABOVE	

Inspector ● Computed by R. T. · C. M. Reviewed by

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Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

Sheet _____

WAGE COMPUTATION SHEET

File _____

Name of employee Clifton B. Mills _____ Date _____

Address 1711 Cockrell _____ Occupation _____ Power _____

Basis of payment _____

Establishment _____ Address _____

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-2-40								48			42.50			
10-7								"			"			
10-21								"			"			
10-28								"			"			
11-4								"			"			
11-11								46			"			
12-2								48			42.50			

Amount due for weeks indicated above

Inspector _____ Computed by _____ R. T. C. M. Reviewed by

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Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet_____

File 42-257

Name of employee Miss Ruth Moffett Date 9-26-40

Address 5405 Vickery Blvd. Occupation Biographical

Basis of payment Weekly Wages

Establishment A. H. Belo Corp. Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								44			18.00			
11-14								"			"			
12-26								36			"			
1-9-39								44			"			
2-27								"			"			
3-6								"			"			
4-17								"			"			
5-29			Vacation					-0-			"			

over

265

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
6-12								44			"			
7-31								"			"			
8-28								"			"			
9-11								"			"			
10-23								"			"			
11-6								"			"			
12-11								"			"			
1-15-40								"			"			
2-26								"			"			
3-11								"			"			
4-29								"			"			
5-6-40								"			"			
6-3								"			"			
7-1								"			"			
8-5								"			"			

9-3-38	No time Record											17.00			
10-10-38	"		"		"							17.00			

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector Computed by R. T. C. M. Reviewed by

267

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Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

Sheet _____

WAGE COMPUTATION SHEET

File _____

Name of employee Ruth Moffett Date _____

Address 5405 Vickery Occupation Biographical

Basis of payment

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-2-40								44			18.00			
10-7								"			"			
10-21								"			"			
10-28								"			"			
11-4								"			"			
11-11								"			"			
12-2								"			"			

Amount due for weeks indicated above

Inspector Computed by R. T. C. M. Reviewed by

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Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet ____

File 42-257

Name of employee B. C. Monroe Date 9-26-40

Address 2112 So. Ervay St. Occupation Power Dept. Employee

Basis of payment Weekly Wage Scale

Establishment A. H. Belo Corp Address DALLAS, TEXAS

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								48			29.50			
11-14								"			"			
12-26								"			"			
1-9-39								"			"			
2-27								"			"			
3-6								"			"			
4-17								"			"			
5-29								47			32.50			

over

269

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
6-12								48			"			
7-31								"			"			
8-28								"			"			
9-11								"			"			
10-23								"			"			
11-6								"			"			
12-11								"			"			
1-15-40								"			"			
2-26								"			"			
3-11								"			"			
4-29								40			"			
5-6								48			"			
6-3								"			"			
7-1								"			34.00			

270

												34.00			
9-5-38		No time records										29.50			
10-10-38		"	"	"								29.50			

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector

Computed by R. T. C. M. Reviewed by

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Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____
File _____
Date _____

Name of employee B. C. Monroe

Address 2112 So. Ervay Occupation Power

Basis of payment

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Underpayment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-2-40								48			34.00			
10-7								"			"			
10-21								"			"			
10-28								"			"			
11-4								"			"			
11-11								"			"			
12-2								48			34.00			

Amount due for weeks indicated above

Inspector Computed by R. T. C. M. Reviewed by

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Form AD-26
U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet_____

File 42-257

Name of employee Robert Montigue (q) Date 9-5-40

Address 1031 Dodd Occupation Paper Handler

Basis of payment

Establishment A. H. Belo Corp. Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
8-6-38								48		15.00				
10-1								56		17.50				
10-8								"		"				
10-29								7 48		2.80 15.00	—special work			
11-5								44-1/2		15.00				
12-10								(55)		17.50				
1-7-39								47		15.00				

over

273

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
1-21								42-1/2		"				
2-26								47		"				
3-4								"		"				
4-30								47-1/2		"				
7-9								48		"				
10-8								"		"				
10-29								47		"				
12-17								45-1/2		"				
1-28-40								45-1/2		"				
4-7								47		"				
6-9								47		"				
8-4								47		"				
9-2								47		15.00				
10-7								47		"				
10-21								46		"				

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9-5-38			No	time						15.00				
10-10-38			"	"						17.50				
										AMOUNT DUE FOR WEEKS INDICATED ABOVE				

Inspector Computed by R. T. C. M. Reviewed by

A-23
Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____

File _____

Date _____

Name of employee Robert Montigue (q)

Address 1031 Dodd Occupation Paper Handler

Basis of payment

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-28-40								46			15.60			
11-4								48			15.60			
11-11								"			15.60			
12-2								54			18.30			
													Amount due for weeks indicated above	

Inspector Computed by R. T. C. M. Reviewed by

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Form AD-24
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____

File _____

Name of employee J. A. Moore

Date _____

Address _____ Occupation Stereotyper

Basis of payment _____

Establishment _____ Address _____

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
	Shifts Union Overtime Paid									Paid				
10-8-39	6	(295 min. O. T.)								61.10				
10-15-39	5	(1 hr. $1.75 O. T.)								45.50				
10-22-39	5	(30 min. O. T.)								44.62				
10-29-39	5									45.40				
										Amount due for weeks indicated above				

Inspector Computed by R. T. C. M. Reviewed by

277

Form AD-26
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____
File 42-257
Date 9-26-40

Name of employee Hal Morrow
Address Dallas, Texas Occupation Mail Room Employee
Basis of payment Weekly Wages - Variable Work Week
Establishment A. H. Belo Corp'n. Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								45			28.95			
11-14								44-3/4			28.85			
12-26								44-1/6			30.15			
1-9-39								44-5/12			30.45			
2-27								44-1/3			30.35			
3-6								44-1/2			30.50			
4-17								44-1/4			30.25			
5-29								36-2/3			30.00			
6-12								44			30.00			
7-31								44			30.00			

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Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____
File _____
Date _____

Name of employee Hal Morrow

Address 2843 Ivandell Occupation Mail Room

Basis of payment

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-2-40								43-1/6			30.00			
10-7								40-5/6			"			
10-21								40-1/4			"			
10-28								40			"			
11-4								41			"			
11-11								39			"			
12-2								41			"			

Amount due for weeks indicated above

Inspector Computed by R. T. C. M. Reviewed by

280

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet_____

File 42-257

Name of employee John Newman Date 9-26-40

Address 628-1/2 N. Zang Blvd. Occupation Collector

Basis of payment Weekly Wage Scale - Variable Work Week

Establishment A. H. Belo Corporation Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								53-1/2			15.00			
11-14-38								47			15.00			
12-26-38								33-1/2			15.00			
1-9-39								49			15.00			
2-27-39								49			15.00			
3-6-39								47			15.00			
4-17-39								47			15.00			
5-29-39								48			15.00			

over

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(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
6-12-39								46			15.00			
7-31-39								46-1/2			15.00			
8-28-39								46			15.00			
9-11-39								46			15.00			
10-23-39								49			15.00			
11-6-39								48			16.00			
12-11-39								46			16.00			
1-15-40								46			16.00			
2-26-40								48			18.00			
3-11-40								48			18.00			
4-29-40								48			18.00			
5-6-40								48			18.00			
6-3-40								45			18.00			
√ 7-1-40		V						0	Vacation		18.00			
8-5-40								44			18.00			

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Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____
File _____
Date _____

Name of employee John Newnan

Address 628-½ N. Zang Occupation Former Mail Boy - Another Job

Basis of payment

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-2-40								45			18.00			
10-7-40								45			18.00			
10-21-40								45			1.00 18.00	election returns		
10-28-40								46			18.00			
11-4-40								37-1/2			18.00			
11-11-40								44			1.00 18.00	election returns		
12-2-40								44			18.00			

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector Computed by R. T. C. M. Reviewed by

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Form AD-56
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

Sheet _____

WAGE COMPUTATION SHEET

File _____

Name of employee Charles Prasifka _____ Date _____

Address _____ Occupation Clerical-Mechanical Department _____

Basis of payment _____

Establishment _____ Address _____

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-16-38								48			34.00			
10-23-38								48			"			
11-6-38								48			"			
11-20-38								48			"			
11-27-38								44			"			
12-4-38								48			"			
1-8-39								44-1/2			"			
1-15-39								48			"			
2-19-39								48-1/2			"			

over

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(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
2-26-39								48-1/4			"			
3-5-39								48-1/2			"			
3-26-39								49			"			
4-2-39								46			"		74c reg 1.11 overtime	
4-16-39								50			"		if works 2 more hrs over-	
4-23-39								49-3/4			"		time rate drops to 1.09¼	
6-11								48-3/4			"		and regular rate drops to	
8-6								50-3/4			"		73c	
10-15								45			"			
10-29								48			"			
11-26								44			"			
12-3								48			"			
12-10								49-1/4			"			
12-24								48			"			

Inspector Computed by R. T. C. M. Reviewed by

Amount due for weeks indicated above

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____
File _____
Date _____

Name of employee Charles Prasifka
Address _____ Occupation Clerical-Mechanical Department _____
Basis of payment _____
Establishment _____ Address _____

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
1-7-1940								48			$34.00			
1-14								48-1/2			"			
4-14								48			"			
7-2								48			"			
7-28								50			"			
8-4								50			"			
8-11								50			"			
8-25								48			"			
9-1								48			"			

Amount due for weeks indicated above

Inspector Computed by R. T. C. M. Reviewed by

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Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____

File _____

Name of employee Thomas Jefferson Simmons

Date _____

Address _____ Occupation Telegraph - Editorial

Basis of payment _____

Establishment _____ Address _____

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-5-38											35.00			
10-10											40.00			
10-31								48			40.00			
11-14								48			40.00			
12-26								53-1/2			40.00			
1-9-39								48			40.00			
2-27								47-1/2			40.00			
3-6								48			40.00			

4-17							47-1/2			40.00				
5-29							48			40.00				
6-12							48-1/4			40.00				
7-31							56			40.00				
8-28							50			40.00				
9-11							48			40.00				
10-23							48			45.00				
11-6							50			45.00				
12-11							48			45.00				
1-15-40							45-1/2			45.00				
2-26							51			45.00				
3-11							50-1/2			45.00				
4-29						No	card			5.00 45.00	–	Special Article		
5-6						"	"			50.00				
6-3						"	"			50.00				
										AMOUNT DUE FOR WEEKS INDICATED ABOVE				

Inspector Computed by R. T. C. M. Reviewed by

289

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____
File _____
Date _____

Name of employee T. J. Simmons
Address _____ Occupation Telegraph
Basis of payment _____
Establishment Head of Dept. No hour record Address _____

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
7-1-40								–			50.00			
8-5								–			"			
9-2								–			"			
10-7								–			"			
10-21								–			"			
10-28								–			"			
11-4								–			"			
11-11								–			"			
12-2								–			"			

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Inspector | Computed by | AMOUNT DUE FOR WEEKS INDICATED ABOVE | R. T. | C. M. | Reviewed by

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____

File 42-257

Name of employee William Snodgrass Date _____

Address 3313 Newman Occupation Night Watchman

Basis of payment

Establishment A. H. Belo Corp. Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-5-38		No	ti	me	rec	ord	ke	pt			15.00			
10-10-38											15.00			
10-31-38								47			20.00			
11-14-38								46			20.00			
12-26-38								46			20.00			
1-9-39								46			20.00			
2-27-39								46			20.00			
3-6-39								46			20.00			

over

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(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Underpayment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
4-17-39								46			20.00			
5-29-39								46			20.00			
6-12-39								46			20.00			
7-31-39								46			20.00			
8-28-39								46			20.00			
9-11-39								46			20.00			
20-23-39								46			20.00			
11-6-39								46			20.00			
12-11-39								46			20.00			
1-15-40								46			20.00			
2-26-40								46			20.00			
3-11-40								46			20.00			

| | | |

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____
File _____
Date _____

Name of employee William Snodgrass
Address 3313 Newman Occupation Night Watchman
Basis of payment
Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked.							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
7-1-40				7				46			20.00			
8-5-40								46			20.00			
9-2-40								46			20.00			
10-7-40								46			20.00			
10-21-40								46			20.00			
10-28-40								46			20.00			
11-4-40								46			20.00			
11-11-40								46			20.00			
12-2-40								46			20.00			

Inspector Computed by

Amount due for weeks indicated above

R. T. C. M.

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Form AD-96
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet_____

File 42-257

Name of employee Bernice Vickers Date 9-26-40

Address 5623 Monticello St. Occupation General Circulation

Basis of payment Weekly Wage Scale - Variable Work Week

Establishment A. H. Belo Corp'n. Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								44			25.00			
11-14								40			25.00			
12-26								32			25.00			
1-9-39								44			25.00			
2-27								44			25.00			
3-6								44			25.00			
4-17								44			25.00			
5-29								44			25.00			

over

295

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
6-12			Va	cati	on			0			25.00			
7-31								48			25.00			
8-28								44			25.00			
9-11								44			25.00			
10-23								44			27.50			
11-6								44			27.50			
12-11								44			27.50			
1-15-40								44			27.50			
2-26								44			27.50			
3-11								44			27.50			
4-29								48			27.50			
5-6								36			27.50			
6-3								42			27.50			
7-1								42			27.50			
8-5								42			27.50			
9-5-38	No time record										25.00			

10-10-38	"	"	"	"	"					25.00				

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector Computed by R. T. C. M. Reviewed by

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____
File _____
Date _____

Name of employee Bernice Vickers
Address 5623 Monticello Occupation General Circulation
Basis of payment
Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-24-40								42			27.50			
10-7								42			"			
10-21								42			"			
10-28								42			"			
11-4								42-2/3			"			
11-11								42			"			
12-2								43			"			

Amount due for weeks indicated above

Inspector Computed by

298

Form AD-39
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet_____

File 42-257

Name of employee Richard West Date 9-26-40

Address 3016 Yale St. Occupation Editorial Writer-Agri.

Basis of payment Weekly Wage Scale - Variable Work Week

Establishment A. H. Belo Corp. Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								44			30.00			
11-14-38								"			"			
12-26-38								46			35.00			
1-9-39								48			"			
2-27-39								47			"			
3-6								32			"			
4-17								48			"			
5-29								"			"			

over

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(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
6-12								"			"			
7-31								"			"			
8-28								"			"			
9-11								"			"			
10-23								"			"			
11-6								"			"			
12-11								"			"			
1-15-40								"			"			
2-26								"			40.00			
3-11								"			40.00			
4-29								"			"			
5-6								"			"			
6-3								42						

300

7-1								42				"							
8-5								42				"							
9-5-38		No	Hour	Record								30.00							
10-10-38		"	"	"								30.00							

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector Computed by R. T. C. M. Reviewed by

Form AD-46
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____
File _____
Date _____

Name of employee Richard West

Address 3016 Yale Occupation Editorial

Basis of payment

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-2-40								42			40.00			
10-7								"			45.00	(Special Article Written)		
10-21								"			40.00			
10-28								"			"			
11-4								34			"			

302

11-11	Left	Employment					"			"			
12-2													

Inspector | Computed by | AMOUNT DUE FOR WEEKS INDICATED ABOVE | R. T. | C. M. | Reviewed by

Form AD-28
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet ____

File 42-257

Name of employee Chas. M. Wilson

Date 9-26-40

Address 1603 Marburg St. Occupation General Circulation

Basis of payment Weekly Wage Scale - Variable Work Week

Establishment A. H. Belo Corp. Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								47[2]			23.50			
11-14								44[2]			"			
12-26								32			"			
1-9-39								44-1/2			"			
2-27								47-1/2			"			
3-6								44-1/2			30.00			
4-17								44-1/2			30.00			
5-29	Vacation							8			"			

over

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
6-12								44[2]			"			
7-31								46-1/2			"			
8-28								44[2]			"			
9-11								44-1/2			"			
10-23								44[2]			"			
11-6								47-1/2			"			
12-11								44-1/2			"			
1-15-40								47-1/2			"			
2-26								"			"			
3-11								"			"			
4-29								48			"			

5-6								44			"					
6-3								43-3/4			"					
7-1								42			"					
8-5								45			"					
9-5-38	No time Record											23.50				
10-10-38	"	"		"								23.50				

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector Computed by R. T. C. M. Reviewed by

Form AD-68
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet _____
File _____
Date _____

Name of employee Chas. M. Wilson
Address 1603 Marburg Occupation Genl. Circulation
Basis of payment
Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-2-40								44-1/2			37.50			
10-7								42			"			
10-21								"			"			
10-28								"			"			
11-4								42-1/2			"			
11-11								42			"			
12-2								42			"			
9-5-38	No time Record										23.50			
10-10-38	"		"		"						23.50			

Amount due for weeks indicated above

Inspector Computed by R. T. C. M. Reviewed by

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U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Sheet
File
Date

WAGE COMPUTATION SHEET

Name of employee Early Walker

Address Occupation Janitor (colored)

Basis of payment

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
9-5-38											18.90			
10-10											"			
10-31								48			"			
11-14								"			"			
12-26								40			"			
1-9-39								48			"			
2-27								"			"			
3-6								"			"			
4-17								"			"			
5-29								"			"			

over

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(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
6-12								"			"			
7-31								"			"			
8-28								"			"			
9-11		Vacation									"			
10-23								48			"			
11-6								"			"			
12-11								"			"			
1-15-40								"			"			
2-26								"			"			
3-11								"			"			
4-29								"			"			
5-6								"			"			
6-3								"			"			

Amount due for weeks indicated above

Inspector | Computed by R. T. C. M. | Reviewed by

308

Form AD-28
U. S. DEPARTMENT OF LABOR
Wage and Hour Division
(7-40)

Plaintiff's Exhibit No. 2. (Continued)

WAGE COMPUTATION SHEET

Sheet
File

Address 2115 Paris Occupation Janitor

Basis of payment

Establishment Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
7-1-40								48			18.90			
8-5								"			"			
9-2								"			"			
10-7								"			"			
10-21								"			"			
10-28								"			"			
11-4								"			"			
11-11								"			"			
12-2								"			"			

Amount due for weeks indicated above

Inspector Computed by R. T. C. M. Reviewed by

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Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 3.

WAGE COMPUTATION SHEET

Sheet 42-257
File 9-19-40
Date

Name of employee James Alderman
Address 5235 Vickery Blvd., Dallas, Texas Occupation Announcer - News Processor
Basis of payment
Establishment A. H. Belo Corpn. WFAA-KGKO Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
8-12-40								60			51.75			
8-19								58-1/2			48.63	other compensation		
9-2								32-1/2			52.50	from sponsar		
10-7								46			67.50			
10-21								47-1/4			72.50			
10-28								50			72.50			
11-4								53-1/2			72.50			
11-11								54-3/4			74.31			
12-2								55-1/4			67.50	other compensation - from sponsar		
										Amount due for weeks indicated above				

Inspector Computed by R. T. C. M. Reviewed by

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Form AD-8
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 3. (Continued)

WAGE COMPUTATION SHEET

Sheet
File
Date

Name of employee Chas. D. Armentrout
Address 3805 Gillon, Dallas, Texas Occupation Bookkeeper (WFAA)
Basis of payment
Establishment A. H. Belo Corporation Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-2-39								49-1/2			$35.00			
11-6-39								44			35.00			
1-8-40								41-1/2			35.00			
3-25-40								45			35.00			
5-6-40								48-1/2			35.00			
6-10-40								42			35.00			
7-8-40								42-1/2			35.00			
8-12-40								54			35.00			
8-19-40								44-1/2			35.00			
9-2-40								54			35.00			
9-9-40								53			35.00			
											Amount due for weeks indicated above			

Inspector Computed by R. T. C. M. Reviewed by

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Form AD-56
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 3. (Continued)

Sheet _____

File _____

Date _____

WAGE COMPUTATION SHEET

Name of employee Velma Boyce

Address _____ Occupation Stenographer

Basis of payment _____

Establishment _____ Address _____

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								41-1/2			35.00			
11-7								41-1/2			35.00			
12-12								41-1/2			35.00			
1-9-39								40-1/2			35.00			
2-6								41-1/2			35.00			
3-13								42-1/2			35.00			
4-24								15.			35.00			
6-12								42-1/2			35.00			
8-21								42-1/2			35.00			

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Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 3. (Continued)

WAGE COMPUTATION SHEET

Sheet _____
File _____
Date _____

Name of employee Olen Brown
Address _____ Occupation Control Operator
Basis of payment _____
Establishment _____ Address _____

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								46-3/4			45.00			
11-7								34-1/4			45.00			
12-12								51-3/4			45.00			
1-9-39								39			45.00			
2-6								55 55			46.59			
3-13								30-1/2			45.00			
4-24								66			57.94			
6-12								48-1/4			45.00			
8-21								44-3/4			45.00			
10-2								62-3/4			54.28			

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Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 3. (Continued)

WAGE COMPUTATION SHEET

Sheet _____

File _____

Date _____

Name of employee Mary Louise Crowdus

Address _____ Occupation Stenographer

Basis of payment _____

Establishment _____ Address _____

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
8-12-40								42			27.50			
9-2								41-1/2			27.50			
10-7								44			27.50			
10-21								42-1/2			13.75(½) 13.75(½)			
10-28								43			13.73(½) 13.75(½)			
11-4								43			13.75(½) 13.75(½)			

11-11							44			13.75 13.75			
12-2							42-1/2			13.75 13.75			
1-6-41							35			X			

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector Computed by R. T. C. M. Reviewed by

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 3. (Continued)

WAGE COMPUTATION SHEET

Sheet ___1.___

File___42-257_____

Name of employee___Teddy P. DeHay_____ Date__9-17-40_____

Address___1224 Georgia St., Dallas, Texas_____ Occupation___Traffic Manager-prepares programs_____

Basis of payment_____

Establishment___A. H. Belo Corp. WFAA-KGKO_____ Address___Dallas, Texas_____

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								48			30.00			
11-7-38								48			30.00			
12-12-38								46			30.00			
1-9-39								45			30.00			
2-6-39								45-1/2			30.00			
3-13-39								47			30.00			
4-24-39								46-1/2			30.00			
8-12-39								47			30.00			
10-2-39								48			35.00			

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Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 3. (Continued)

WAGE COMPUTATION SHEET

Sheet 2

File 42-257

Name of employee Teddy P. DeHay Date

Address Occupation

Basis of payment

Establisament Address

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
11-11-40								42-1/2			35.00			
12-2-40								41			35.00			
1-6-41								43-1/2		X				

Amount due for weeks indicated above

Inspector Computed by R. T. C. M. Reviewed by

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Form AD-46
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 3. (Continued)

WAGE COMPUTATION SHEET

Sheet 1

File 42-257

Name of employee William C. Ellis Date 9-17-40

Address 5648 Eastside Ave., Dallas, Texas Occupation Studio control engineer

Basis of payment 45.00 as operator—10.00 for handling electrical transcriptions.

Establishment A. H. Belo Corp. WFAA Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								49-1/2			55.00			
11-7-38								49-1/4			55.00			
12-12-38								51			55.00			
1-9-39								53-1/2			55.00			
2-6-39								52			55.00			
4-24-39								60-1/2			55.00			
6-12-39								49			55.00			
7-10-39								62-1/2			55.00			

over

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
8-21-39								61-1/2			55.00			
10-2-39								74-1/2			65.13			
11-6-39				/				56			55.00			
1-8-40								52-1/2			55.00			
5-6-40								45-1/2			55.00			
6-10-40								57-1/2			55.00			
7-8-40								56-1/4			55.00			
8-19-40								48			55.00			
9-2-40								50 3/4			55.00			
10-7-40								71-1/4			55.00			
10-21-40								70-1/4			55.00			
10-28-40								66-3/4			55.00			
11-4-40								66-3/4			55.00			
11-11-40								67-1/4			55.00			
12-2-40								73			55.00			
1-6-41								81-1/2			X			

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Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 3. (Continued)

Sheet 1

WAGE COMPUTATION SHEET

File 42-257

Name of employee Cecil I. Hartzell

Date 9-17-40

Address 5904 Revere Drive, Dallas, Texas Occupation Announcer

Basis of payment

Establishment A. H. Belo Corp. FWAA Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								48-1/2			60.00	added am't for program	above 50.00 extras	
11-7-38								49			60.00		"	
12-12-38								51-1/2			60.00		"	
1-9-39								48			60.00		"	
2-6-39								50-1/2			60.00		"	
3-13-39								50-1/2			60.00		"	
4-24-39								54-1/2			60.00		"	
6-12-39								40			60.00		"	
10-2-39								47-1/2			54.17		"	
11-6-39								47			57.50		"	

1-8-40							45			57.50		"		
3-25-40							49			57.50		"		
5-6-40							43-1/2			65.00		"		
6-10-40							43-1/12			52.50		"		
7-8-40							42			56.50		"		
8-12-40							40-3/4			52.50		"		
9-2-40		(vacation)					12-1/2			60.00		"		
10-7-40							56			65.00	2.50 for overtime rest above $50.00 for program extras			
10-21-40							47-3/4			67.50				
10-28-40							45-1/4			67.50				
11-4-40							55-1/2			67.50				
11-11-40							41			67.50				
12-2-40							47			60.00				
1-6-41							44-1/4			X				
										AMOUNT DUE FOR WEEKS INDICATED ABOVE				

Inspector Computed by R. T. C. M. Reviewed by

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 3. (Continued)

Sheet_____

WAGE COMPUTATION SHEET

File 42-257

Name of employee Arthur C. Kuehn Date 9-17-40

Address 5728 Worth St., Dallas, Texas Occupation Librarian - Music

Basis of payment

Establishment A. H. Belo Corpn. WFAA Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								57-1/2			43.02			
11-7-38								54			40.00			
12-12								54			40.00			
1-9-39								40-1/2			40.00			
2-6-								54			40.00			
3-13								54			40.00			
4-24-								54			40.00			
6-12								54			40.00			
10-2								54			45.00			
11-6								54			45.00			

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1-8-40								54				45.00			
3-25								54				45.00			
5-6								54				45.00			
6-10								52-1/2				45.00			
7-8								52-1/2				45.00			
8-12								52-1/2				45.00			
9-2								68-3/4				61.59			
9-9								60-3/4				52.59			
10-7								54-1/4				45.28			
10-21								54				47.50			
10-28								53-1/2				47.74			
11-4								54				47.50			
11-11								54				47.50			
12-2								54				47.50			
1-6-41								55				X			
												AMOUNT DUE FOR WEEKS INDICATED ABOVE			

Inspector Computed by R. T. C. M. Reviewed by

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 3. (Continued)

WAGE COMPUTATION SHEET

Sheet 1
File 42-257
Date 9-17-40

Name of employee Eudell Martin
Address 404 East 10th, Dallas, Texas Occupation Vari-types
Basis of payment
Establishment A. H. Belo Corp. WFAA - KGKO Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
7-8-40								57-3/4			21.88			
9-2-40								64-3/4			25.38			
10-7-40								46-3/4			20.00			
10-21-40								37			20.00			
10-28-40								37			20.00			
11-4-40								38-1/4			20.00			
11-11-40								41-1/4			20.00			
12-2-40								38-1/4			20.00			
1-6-41	Time not yet reported - works nights													

Amount due for weeks indicated above

Inspector Computed by

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Form AD-56
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 3. (Continued)

WAGE COMPUTATION SHEET

Sheet_____

File 42-257

Name of employee Eugene Stanley Martin Date 9-18-40

Address 618 N. Lancaster Dallas, Texas Occupation News Processor

Basis of payment

Establishment A. H. Belo Corpn. WFAA-KGKO Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
6-12-39								54			30.00			
7-10								54			30.00			
8-21								54			30.00			
10-2								54			30.00			
11-6								54			30.00			
1-8-40								52			30.00			
3-25								48			30.00			
5-8								48			30.00			

over

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(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
6-10								48			30.00			
7-8								48			30.00			
9-2								48			30.00			
9-9								48			30.00			
10-7								42			30.00			
10-21								42			35.00			
10-28								42			35.00			
11-4								42			35.00			
11-11								42			35.00			
12-2								42			35.00			
1-6-41								42			X			

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector | Computed by | R. T. | C. M. | Reviewed by

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 3. (Continued)

WAGE COMPUTATION SHEET

Sheet_____

File 42-257

Name of employee James Orville Raines Date 9-18-40

Address 2926 Arizona St. Occupation Mail or Office Boy

Basis of payment

Establishment A. H. Belo Corpn. WFAA-KGKO Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-31-38								46			15.00			
11-7								47-1/2			15.00			
12-12								49-1/2			15.00			
1-9-39								47-1/2			15.00			
2-6								46			15.00			
3-13								46			15.00			
4-24								46			15.00			
6-12								46			15.00			

over

331

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
8-21								46			15.00			
10-2								46			17.50			
11-6								57			19.75			
1-8-40								46			17.50			
3-25								46			20.00			

Amount due for weeks indicated above

Inspector

Computed by R. T. C. M. Reviewed by

Form AD-24
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 3. (Continued)

WAGE COMPUTATION SHEET

Sheet _____
File _____
Date _____

Name of employee T. W. Sharpe

Address _____ Occupation Control Operator

Basis of payment

Establishment _____ Address _____

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
10-7-40								51-3/4			40.00			
10-21								62-1/2			48.50			
10-28								49-1/2			40.00			
11-4								41-3/4			40.00			
11-11								49			40.00			
12-2								46-1/2			42.50			
1-6-41								49			X			

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector Computed by R. T. C. M. Reviewed by

Form AD-56
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 3. (Continued)

WAGE COMPUTATION SHEET

Sheet____

File 42-257

Date 9-17-40

Name of employee W. Hal Thompson

Address 3712 Gilbert, Dallas, Texas Occupation Announcer

Basis of payment

Establishment A. H. Belo Corpn. WFAA Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
5-6-40								61			61.67			
6-10								28-1/4			42.50			
7-8								30-1/2			42.50			
8-12								36-1/4			42.50			
8-19								42			60.00			
9-2								46			52.50			
9-9								51-1/2			52.50			
10-7								46-3/4			145.43			

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10-21							49-1/4			152.50					
10-28							35-3/4			152.50					
11-4							38			152.50					
11-11							48			152.50					
12-2							49-1/4			52.50					
1-6-41							43-1/2			X					

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector Computed by R. T. C. M. Reviewed by

335

Form AD-86
U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(7-40)

Plaintiff's Exhibit No. 3. (Continued)

WAGE COMPUTATION SHEET

Sheet
File 42-257
Date 9-17-40

Name of employee J. L. Wicker
Address
Occupation Plant Engineer - WFAA KGKO
Basis of payment
Establishment A. H. Belo Corp. Address Dallas, Texas

(a)	(b)							(c)	(d)	(e)	(f)	(g)	(h)	(i)
Work Week Ending	Hours Worked							Total	Hourly Rate of Pay	Total Wages Due	Total Wages Paid	Under-payment	Illegal Deductions	Total Due Worker
	S	M	T	W	T	F	S							
11-7-38								49			42.50			
12-12-38								44-1/2			42.50			
1-9-39								52			42.50			
2-6-39								53			42.50			
3-13-39								59			47.29			
4-24-39								65			54.31	Check 5/2/39		
6-12-39								48			45.00			
8-21-38								59			50.06			
3-25-40								67-1/4			59.91 (49.91)	$59.91 check 4/2/39		
5-6-40								73-1/4			65.53	$65.53 check 5/14/39		

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7-8-40							38-1/4			45.00			
8-12-40							47-3/4			45.00			
8-19-40							46-3/4			45.00			
9-2-40							45			45.00			
9-9-40							57-3/4			49.22 45.00	overtime paid 9/17/40	$4.22	
10-7-40							57-1/2			48.94 47.34			
10-21-40							66-3/4			59.34			
10-28-40							58			50.29			
11-4-40							37			45.00			
11-11-40							56-1/4			48.38			
12-2-40							59-3/4			52.35			
1-6-41							41-1/4			X			

AMOUNT DUE FOR WEEKS INDICATED ABOVE

Inspector Computed by R. T. C. M. Reviewed by

PLAINTIFF'S EXHIBIT NO. 4.

October 28, 1938

TO DEPARTMENT HEADS:

By reason of the new Wage and Hour Law, it will be necessary, beginning with the next pay day, for all employees not in executive or supervisory capacity to fill out a time card before drawing their pay checks.

You will be given a supply of time cards, as per sample attached, together with a list of employees in your department, and we suggest that one be handed to each employee well in advance of time that checks are to be delivered. Each employee is, of course, to fill out his or her own, card, sign same, and hand in when drawing his check.

The responsibility will be with Department Heads to see that this is done without fail. Whenever all checks for the week are disbursed, the time cards should be delivered to payroll department where they will be checked and filed.

Your cooperation is asked to see that all cards are properly and completely filled in.

Detail of manner of handling this will be left up to the respective Department Heads.

(Signed) G. B. Dealey

C O P Y

PLAINTIFF'S EXHIBIT No. 5.

October 19, 1939

TO ALL DEPARTMENT HEADS:

IMPORTANT

Effective October 24, 1939, and until October 24, 1940, the Fair Labor Standards Act provides for a minimum wage of thirty cents per hour and a maximum of 42 hours per week, before overtime rates of time and one-half must be paid.

In view of the fact that we have only a few office boys and clerks in minor capacity that earn less than the required minimum, the change will have very little effect on our operation. However, we will make adjustment immediately in the rates of pay of those few employees to conform to the required scale to become effective under the law on October 24, 1939.

Perhaps it is advisable at this time to again call the attention of all Department Heads to the rules which we have in effect in order to adhere to the law, and which are hereby adjusted to meet the changed condition effective October 24, 1939. Those rules are:

1. A minimum wage of 30¢ per hour shall be paid for a maximum of 42 hours per week;

2. Any work after 42 hours per week shall be paid for at time and one-half, or a minimum of 45¢ per hour;

3. Those employees whose wage scale is $12.00 per week shall not work more than 42 hours per week without written instructions from the Department Head and for such overtime worked time and one-half shall be paid;

4. The present office hours shall prevail for all employees whose weekly wages equal or exceed

a basic rate of 30¢ per hour for the 42 hours per week and time and one-half for all hours worked in excess of the 42 hours per week. Adjustment shall be made by the Department Heads immediately in the wages and hours for all employees that differ from this principle;

5. No overtime after the schedule, as arranged by the Department Heads, shall be worked by employees without written instructions from the Department Heads;

6. Exemptions for outside salesmen and bona fide supervisory employees shall not be changed from those exemptions that have been in effect during the past year;

7. All employees must fill out their time cards, which shall be examined by the Department Heads to make certain that all cards are properly and completely filled out and that A. H. Belo Corporation is complying with the law in every respect;

8. All new employees must be advised in writing of their basic hourly rate and they must confirm in writing their understanding and agreement to that hourly rate.

The Department Heads shall compute the hourly rate on the basis of 1/60th of the weekly wage that the Department Head has determined is fair and proper, providing that the hourly rate is 30¢ per hour or more.

(signed) G. B. Dealey

COPY

PLAINTIFF'S EXHIBIT No. 9.

Form X-2—11-39—15m P9—DD

TIME REPORT

TO

A. H. BELO CORPORATION

By Walter Snodgrass for Week Ending 4-29-40

	TUES	WED	THUR	FRI	SAT	SUN	MON	TOTAL
No. of Hours		12	12	12		10		46

This is to certify that I worked the above number of hours, and no more, during the week ending 4-29-40

W. W. Snodgrass
Signature of Employee

3313 Newman
Residence Address

This Report must be filed at the time you receive your salary check.

Plaintiff's Exhibit No. 9—Continued.

Form X-2—11-39—15m

TIME REPORT

TO

A. H. BELO CORPORATION

By Walter Snodgrass for Week Ending 11/11/40

	TUES	WED	THUR	FRI	SAT	SUN	MON	TOTAL
No. of Hours		12	12	12		10		46

This is to certify that I worked the above number of hours, and no more, during the week ending 11-11-1940

W. W. Snodgrass
Signature of Employee

3313 Newman
Residence Address

This Report must be filed at the time you receive your salary check.

Plaintiff's Exhibit No. 9—Continued.

Form X-2—1-39—7½m

TIME REPORT

TO

A. H. BELO CORPORATION

By Walter Snodgrass for Week Ending 4/17/39

	TUES	WED	THUR	FRI	SAT	SUN	MON	TOTAL
No. of Hours		12	12	12		10		46

This is to certify that I worked the above number of hours, and no more, during the week ending 4-17-1939

W. W. Snodgrass
Signature of Employee

3313 Newman
Residence Address

This Report must be filed at the time you receive your salary check.

PLAINTIFF'S EXHIBIT No. 10.

Form X-2—11-39—15m P-10—DD

TIME REPORT

TO

A. H. BELO CORPORATION

By C. B. Mills for Week Ending 11-11-40

	TUES	WED	THUR	FRI	SAT	SUN	MON	TOTAL
No. of Hours	8	10½	8	9	0	0	10½	46

This is to certify that I worked the above number of hours, and no more, during the week ending Nov.-11-1940

C. B. Mills
Signature of Employee

1711 Cockrell Ave.
Residence Address

This Report must be filed at the time you receive your salary check.

Plaintiff's Exhibit No. 10—Continued.

Form X-2—1-39—7½m

TIME REPORT

TO

A. H. BELO CORPORATION

By Clifton B. Mills for Week Ending 2-27-39

	TUES	WED	THUR	FRI	SAT	SUN	MON	TOTAL
No. of Hours	8	8	8	8	8	0	8	48

This is to certify that I worked the above number of hours, and no more, during the week ending Feb-27-39

Clifton B. Mills
Signature of Employee

1711 Cockrell Ave.
Residence Address

This Report must be filed at the time you receive your salary check.

Plaintiff's Exhibit No. 10—Continued.

Form X-2—4-39—11,700

TIME REPORT

TO

A. H. BELO CORPORATION

By C. B. Mills for Week Ending 2-26-40

	TUES	WED	THUR	FRI	SAT	SUN	MON	TOTAL
No. of Hours	8	8	8	8	8	0	8	48

This is to certify that I worked the above number of hours, and no more, during the week ending Feb 26-1940

C. B. Mills
Signature of Employee

1711 Cockrell Ave.
Residence Address

This Report must be filed at the time you receive your salary check.

PLAINTIFF'S EXHIBIT No. 11.

Form X-2—4-39—11,700

8:15 Hr. O.T.

P-11—DD $9.28 OKC

TIME REPORT

TO

A. H. BELO CORPORATION

By OLIN S. BROWN for Week Ending Oct 2 1939

	TUES	WED	THUR	FRI	SAT	SUN	MON	TOTAL
No. of Hours	14.00	8.30	11.00	6:45	5.15	8.00	9.15	62.45

This is to certify that I worked the above number of hours, and no more, during the week ending Oct. 2, 1939

Olin S. Brown
Signature of Employee

6021 Bryan Parkway
Residence Address

This Report must be filed at the time you receive your salary check.

Plaintiff's Exhibit No. 11—Continued.

Form X-2—4-39—11,700

TIME REPORT

TO

A. H. BELO CORPORATION

By OLIN S. BROWN for Week Ending Oct 9 1939

	TUES	WED	THUR	FRI	SAT	SUN	MON	TOTAL
No. of Hours	1.00	7.15	7.00	8.45	12.00	8¼	8¼	53.00

This is to certify that I worked the above number of hours, and no more, during the week ending Oct. 9, 1939

Olin S. Brown
Signature of Employee

6021 Bryan Parkway
Residence Address

This Report must be filed at the time you receive your salary check.

Plaintiff's Exhibit No. 11—Continued.

Form X-2—4-39—11,700

9:34 Hrs. O.T. @ $1.125—$10.76

TIME REPORT

TO

A. H. BELO CORPORATION

By OLIN S. BROWN for Week Ending 8-12-1940

	TUES	WED	THUR	FRI	SAT	SUN	MON	TOTAL
No. of Hours	6.40	9.30	11.16	9.50	11.13	7.55	7.10	63.34

This is to certify that I worked the above number of hours, and no more, during the week ending August 12, 1940

Olin S. Brown
Signature of Employee

6021 Bryan Parkway
Residence Address

This Report must be filed at the time you receive your salary check.

Plaintiff's Exhibit No. 11—Continued.

Form X-2—4-39—11,700

TIME REPORT

TO

A. H. BELO CORPORATION

By O. S. BROWN for Week Ending 8-19-1940

	TUES	WED	THUR	FRI	SAT	SUN	MON	TOTAL
No. of Hours	6.40	6.40	10.55	—	7.00	6.15	—	37.30

This is to certify that I worked the above number of hours, and no more, during the week ending August 19, 1940

Olin S. Brown
Signature of Employee

6021 Bryan Parkway
Residence Address

This Report must be filed at the time you receive your salary check.

Plaintiff's Exhibit No. 11—Continued.

OVERTIME 12 Min. @ 1.125—.23c

(OVER)

TIME REPORT

TO

A. H. BELO CORPORATION

By OLIN S. BROWN for Week Ending 11-4-1940

	TUES	WED	THUR	FRI	SAT	SUN	MON	TOTAL
No. of Hours	—	9.15	9.15	9.15	8.00	8.30	9.15	53½ WFAA KGKO

This is to certify that I worked the above number of hours, and no more, during the week ending November 4, 1940

OK Alex Keese 11/7/40

Olin S. Brown
Signature of Employee

6021 Bryan Parkway
Residence Address

This Report must be filed at the time you receive your salary check.

Plaintiff's Exhibit No. 11—Continued.

TIME REPORT

TO

A. H. BELO CORPORATION

By OLIN S. BROWN for Week Ending Nov 11 1940

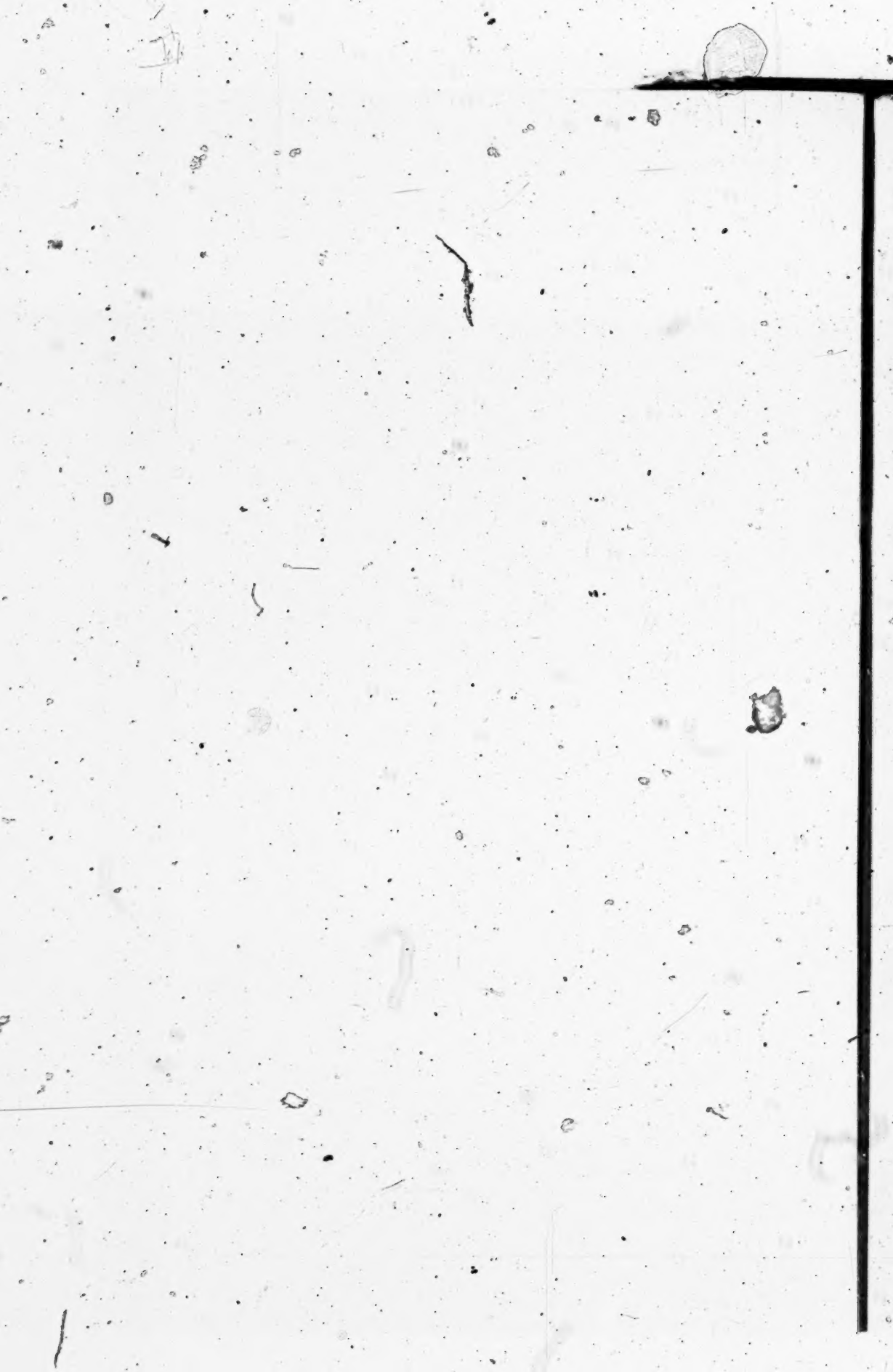
	TUES	WED	THUR	FRI	SAT	SUN	MON	TOTAL
No. of Hours	4.00	9.15	10-	—	9.15	9.15	—	41.45 WFAA KGKO

This is to certify that I worked the above number of hours, and no more, during the week ending Nov 11 1940

Olin S. Brown
Signature of Employee

6021 Bryan Parkway
Residence Address

This Report must be filed at the time you receive your salary check.



PLAINTIFF'S EXHIBIT No. 12.

PLAINTIFF'S EXHIBIT No. 13

NAME	WILLIAM WALTER SNODGRASS	S.S. NO.	451-07-7702
ADDRESS	3313 NEWMAN		
DATE OF BIRTH	OCTOBER 27 1884	SEX MALE / COLOR WHITE	MARRIED / SINGLE
PLACE OF BIRTH		PARENTS NAME	
WEEKLY WAGES			
Form 18-E—1-38—2m	DEPT. BUILDING OPERATIONS		

OLD BALANCE	HRS.	WAGES	EXTRA	FEDERAL TAX		OTHER DEDUCTIONS	NEW BALANCE	DATE
							245 00	FORWARD
245 00		15 00		15			260 00	MAY -3 1938
260 00		15 00		15		85	275 00	MAY 10 1938
275 00		15 00		15			290 00	MAY 17 1938
290 00		15 00		15			305 00	MAY 24 1938
305 00		15 00		15			320 00	MAY 31 1938
320 00		15 00		15			335 00	JUN -7 1938
335 00		15 00		15		85	350 00	JUN 14 1938
350 00		15 00		15			365 00	JUN 21 1938
365 00		15 00		15			380 00	JUN 28 1938
380 00		15 00		15	195 00		395 00	JUL -5 1938

395 00		15 00		15			410 00	JUL 12 1938	
410 00		15 00		15		85	425 00	JUL 19 1938	
425 00		15 00		15			440 00	JUL 26 1938	
440 00		15 00		15			455 00	AUG -2 1938	
455 00		15 00		15		85	470 00	AUG -9 1938	
470 00		15 00		15			485 00	AUG 16 1938	
485 00		15 00		15			500 00	AUG 23 1938	
500 00		15 00		15			515 00	AUG 30 1938	
515 00		15 00		15			530 00	SEP -6 1938	
530 00		15 00		15		85	545 00	SEP 13 1938	
545 00		15 00		15			560 00	SEP 20 1938	
560 00		15 00		15	*195 00*		575 00	SEP 27 1938	
575 00		15 00		15			590 00	OCT -4 1938	
590 00		5 00		05			595 00	OCT -4 1938	355
595 00		20 00		20		85	615 00	OCT 11 1938	
615 00		20 00		20			635 00	OCT 18 1938	
635 00		20 00		20			655 00	OCT 25 1938	
655 00		20 00		20			675 00	NOV -1 1938	
675 00		20 00		20		85	695 00	NOV -8 1938	
695 00		20 00		20			715 00	NOV 15 1938	
715 00		20 00		20			735 00	NOV 22 1938	
735 00		20 00		20			755 00	NOV 29 1938	
755 00		20 00		20			775 00	DEC -6 1938	
775 00		20 00		20		85	795 00	DEC 13 1938	
795 00		20 00		20			815 00	DEC 20 1938	
815 00		5 05		05			820 05	DEC 23 1938	
820 05		20 00		20	*281 70*		840 05	DEC 27 1938	
840 05	*16 65*	16 65		17			856 70	DEC 31 1938	

PLAINTIFF'S EXHIBIT No. 13—Continued

NAME WILLIAM WALTER SNODGRASS | S.S. NO. 451-07-7702

ADDRESS

DATE OF BIRTH | SEX | COLOR | MARRIED SINGLE

PLACE OF BIRTH | PARENTS NAME

WEEKLY WAGES

Form 18-E—1-38—2m DEPT.

OLD BALANCE	HRS.	WAGES	EXTRA	FEDERAL TAX		OTHER DEDUCTIONS	NEW BALANCE	DATE
x xx	3 35	3 35		03			3 35	JAN -3 1939
3 35		20 00		20		85	23 35	JAN 10 1939
23 35		20 00		20			43 35	JAN 17 1939
43 35		20 00		20			63 35	JAN 24 1939
63 36		20 00		20			83 35	JAN 31 1939
83 35		20 00		20			103 35	FEB -7 1939
103 35		20 00		20		85	123 35	FEB 14 1939
123 35		20 00		20			143 35	FEB 21 1939
143 35		20 00		20		2 37	163 35	FEB 28 1939
163 35		20 00		20			183 35	MCH -7 1939
183 35		20 00		20		85	203 35	MAR 14 1939

203 35		20 00		20			223 35	MCH	21	1939	
223 35		20 00		20		95	243 35	MCH	28	1939	
243 35		20 00		20			263 35	APR	-4	1939	
263 35		20 00		20		85	283 35	APR	11	1939	
283 35		20 00		20			303 35	APR	18	1939	
303 35		20 00		20		95	323 35	APR	25	1939	
323 35		3 57		04			326 92	APR	25	1939	
326 92		20 00		20			346 92	MAY	-2	1939	
346 92		20 00		20		85	366 92	MAY	-9	1939	
366 92		20 00		20			386 92	MAY	16	1939	
386 92		20 00		20		95	406 92	MAY	23	1939	
406 92		20 00		20			426 92	MAY	30	1939	
426 92		20 00		20			446 92	JUN	-6	1939	
446 92		20 00		20		85	466 92	JUN	13	1939	
466 92		20 00		20			486 92	JUN	20	1939	
486 92		20 00		20	263 57	95	506 92	JUN	27	1939	
506 92		20 00		20			526 92	JUL	-4	1939	
526 92		20 00		20		95	546 92	JUL	25	1939	
546 92		20 00		20			566 92	AUG	-1	1939	
566 92		20 00		20		85	586 92	AUG	-8	1939	
586 92		20 00		20			606 92	AUG	15	1939	
606 92		20 00		20		95	626 92	AUG	22	1939	
626 92		20 00		20			646 92	AUG	29	1939	
646 92		20 00		20			666 92	SEP	-5	1939	
666 92		20 00		20		85	686 92	SEP	12	1939	
686 92		20 00		20			706 92	SEP	19	1939	
706 92		20 00		20		95	726 92	SEP	26	1939	
								FORWARD			

PLAINTIFF'S EXHIBIT No. 13—Continued

NAME WILLIAM WALTER SNODGRASS | S.S. NO. 451-07-7702

ADDRESS 3313 NEWMAN

DATE OF BIRTH OCTOBER 27 1884 | SEX MALE | COLOR WHITE | MARRIED / SINGLE

PLACE OF BIRTH | PARENTS NAME

WEEKLY WAGES

Form 18-E—1-38—2m | DEPT. BUILDING

OLD BALANCE	HRS.	WAGES	EXTRA	FEDERAL TAX		OTHER DEDUCTIONS	NEW BALANCE	DATE
							726 92	FORWARD
726 92		20 00		20	220 00		746 92	OCT -3 1939
746 92		20 00		20		90	766 92	OCT 10 1939
766 92		20 00		20		—	786 92	OCT 17 1939
786 92		20 00		20		95	806 92	OCT 24 1939
806 92		20 00		20			826 92	OCT 31 1939
826 92		20 00		20			846 92	NOV -7 1939
846 92		20 00		20		90	866 92	NOV 14 1939
866 92		20 00		20			886 92	NOV 21 1939
886 92		20 00		20		95	906 92	NOV 28 1939
906 92		20 00		20			926 92	DEC -5 1939
926 92		20 00		20		90	946 92	DEC 12 1939
946 92		20 00		20			966 92	DEC 19 1939
[illegible]		[illegible]		[illegible]			[illegible]	[illegible]
1006 92		20 00		20	300 00		1026 92	DEC 31 1939

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x xx	20 00	20		90	20 00	JAN	-9	1940
20 00	20 00	20			40 00	JAN	16	1940
40 00	20 00	20		95	60 00	JAN	23	1940
60 00	20 00	20			80 00	JAN	30	1940
80 00	20 00	20			100 00	FEB	-6	1940
100 00	20 00	20		90	120 00	FEB	13	1940
120 00	20 00	20			140 00	FEB	20	1940
140 00	20 00	20		95	160 00	FEB	27	1940
160 00	20 00	20			180 00	MCH	-6	1940
180 00	20 00	20		90	200 00	MCH	12	1940
200 00	20 00	20			220 00	MCH	19	1940
220 00	20 00	20		95	240 00	MCH	26	1940
240 00	20 00	20			260 00	APR	-2	1940
260 00	20 00	20		90	280 00	APR	-9	1940
280 00	20 00	20			300 00	APR	16	1940
300 00	20 00	20		95	320 00	APR	23	1940
320 00	20 00	20			340 00	APR	30	1940
340 00	20 00	20			360 00	MAY	-7	1940
360 00	20 00	20		90	380 00	MAY	14	1940
380 00	20 00	20			400 00	MAY	21	1940
400 00	20 00	20		95	420 00	MAY	28	1940
420 00	20 00	20			440 00	JUN	-4	1940
440 00	20 00	20		90	460 00	JUN	11	1940
460 00	20 00	20			480 00	JUN	18	1940
480 00	20 00	20	260 00	95	500 00	JUN	25	1940
500 00	20 00	20			520 00	JUL	-2	1940
520 00	20 00	20	FORWARD	90	540 00	JUL	-9	1940

PLAINTIFF'S EXHIBIT No. 13—Continued

NAME	WILLIAM WALTER SNODGRASS	S.S. NO.	451-07-7702
ADDRESS			
DATE OF BIRTH	SEX	COLOR	MARRIED SINGLE
PLACE OF BIRTH	PARENTS NAME		
WEEKLY WAGES			
Form 18-E—1-38—2m	DEPT.		

OLD BALANCE	HRS.	WAGES	EXTRA	FEDERAL TAX		OTHER DEDUCTIONS	NEW BALANCE	DATE
							540 00	FORWARD
540 00		20 00		20			560 00	JUL 16 1940
560 00		20 00		20		95	580 00	JUL 23 1940
580 00		20 00		20			600 00	JUL 30 1940
600 00		20 00		20			620 00	AUG -6 1940
620 00		20 00		20		90	640 00	AUG 13 1940
640 00		20 00		20			660 00	AUG 20 1940
660 00		20 00		20		95	680 00	AUG 27 1940
680 00		20 00		20			700 00	SEP -3 1940
700 00		20 00		20		90	720 00	SEP 10 1940
720 00		20 00		20			740 00	SEP 17 1940

360

740 00		20 00			20	260 00			95	760 00	SEP	24	1940
760 00		20 00			20					780 00	OCT	1	1940
780 00		20 00			20				90	800 00	OCT	8	1940
800 00		20 00			20					820 00	OCT	15	1940
820 00		20 00			20				95	840 00	OCT	22	1940
840 00		20 00			20					860 00	OCT	29	1940
860 00		20 00			20					880 00	NOV	5	1940
880 00		20 00			20				90	900 00	NOV	12	1940
900 00		20 00			20					920 00	NOV	19	1940
920 00		20 00			20				95	940 00	NOV	26	1940
940 00		20 00			20					960 00	DEC	3	1940
960 00		20 00			20				90	980 00	DEC	10	1940
980 00		20 00			20					1000 00	DEC	17	1940
1000 00		20 80		20 80	21					1020 80	DEC	20	1940
1020 80		20 80			20				95	1040 80	DEC	24	1940
1040 80		20 00			20	300 80				1060 80	DEC	31	1940
x xx		20 00			20					20 00	JAN	7	1941
20 00		20 00			20				90	40 00	JAN	14	1941
40 00		20 00			20					60 00	JAN	21	1941
60 00		20 00			20				95	80 00	JAN	28	1941
80 00		20 00			20					100 00	FEB	4	1941

PLAINTIFF'S EXHIBIT No. 13—Continued

NAME OLIN S. BROWN | S.S. NO. 451-09-4815

ADDRESS

DATE OF BIRTH | SEX | COLOR | MARRIED SINGLE

PLACE OF BIRTH | PARENTS NAME

WEEKLY WAGES

Form 18-E—1-38—2m DEPT.

OLD BALANCE	HRS.	WAGES	EXTRA	FEDERAL TAX		OTHER DEDUCTIONS	NEW BALANCE	DATE
703 97		45 00		45			748 97	4 25 39
748 97		45 00	12 94	58		1 50	806 91	5 2 39
806 91		45 00		45			851 91	5 9 39
851 91		45 00		45			896 91	5 16 39
896 91		45 00		45			941 91	5 23 39
941 91		45 00		45			986 91	5 30 39
986 91		45 00		45		1 50	1031 91	6 6 39
1031 91		45 00		45			1076 91	6 13 39
1076 91		45 00		45			1121 91	6 20 39
1121 91		45 00		45			1166 91	6 27 39
1166 91		45 00		45		1 50	1211 91	7 4 39
1211 91		45 00		45			1256 91	7 11 39
1256 91		45 00		45			1301 91	7 18 39

362

1391 91		45 00		45			1436 91	8 8 39
1436 91		45 00		45			1481 91	8 15 39
1481 91		45 00		45			1526 91	8 22 39
1526 91		45 00		45	2.25		1571 91	8 29 39
1571 91		45 00		45		1 50	1616 91	9 5 39
1616 91		45 00		45			1661 91	9 12 39
1661 91		45 00		45			1706 91	9 19 39
1706 91		45 00		45			1751 91	9 26 39
1751 91		45 00		45		1 50	1796 91	10 3 39
1796 91		45 00	9 28	54			1851 19	10 10 39
1851 19		45 00		45			1896 19	10 17 39
1896 19		45 00	14 34	59			1955 53	10 24 39
1955 53		45 00	13 79	59			2014 32	10 31 39
2014 32		45 00		45		1 50	2059 32	11 7 39
2059 32		45 00		45			2104 32	11 14 39
2104 32		45 00		45			2149 32	11 21 39
2149 32		45 00		45			2194 32	11 28 39
2194 32		45 00		45		1 50	2239 32	12 5 39
2239 32		45 00		45			2284 32	12 12 39
2284 32		45 00	3 66	49			2332 98	12 19 39
2332 98		45 00		45			2377 98	12 21 39
2377 98		45 00		45			2422 98	12 26 39
2422 98		45 00		45		1 50	2467 98	12 31 39
		45 00		45			45 00	1 9 40
45 00		45 00		45			90 00	1 16 40
90 00		45 00		45			135 00	1 23 40
135 00		45 00		45	1.80		180 00	1 30 40

PLAINTIFF'S EXHIBIT No. 13—Continued

NAME	OLIN S. BROWN	S.S. NO.	451-09-4815
ADDRESS			
DATE OF BIRTH		SEX	COLOR	MARRIED SINGLE
PLACE OF BIRTH		PARENTS NAME	
WEEKLY WAGES			
Form 18-E—1-38—2m.	DEPT.		

OLD BALANCE	HRS.	WAGES	EXTRA	FEDERAL TAX		OTHER DEDUCTIONS	NEW BALANCE	DATE
180 00		45 00		45		1 50	225 00	2 6 40
225 00		45 00		45			270 00	2 13 40
270 00		45 00		45			315 00	2 20 40
315 00		45 00		45			360 00	2 27 40
360 00		45 00		45		1 50	405 00	3 5 40
405 00		45 00		45			450 00	3 12 40
450 00		45 00	2 81	48			497 81	3 19 40
497 81		45 00	1 97	47			544 78	3 26 40
544 78		45 00		45		1 50	589 78	4 2 40
589 78		45 00	4 50	50			639 28	4 9 40

364

729 28		45 00		45					
774 28		45 00		45			774 28	4 30 40	
819 28		45 00		45		1 50	819 28	5 7 40	
864 28		45 00		45			864 28	5 13 40	
909 28		45 00		45			909 28	5 20 40	
954 28		45 00	7 50	53		1 50	954 28	5 27 40	
1006 78		45 00		45			1006 78	6 4 40	
1051 78		45 00		45			1051 78	6 11 40	
1096 78		45 00		45		2 85	1096 78	6 18 40	
1141 78		45 00		45		1 50	1141 78	6 25 40	
1186 78		45 00		45			1186 78	7 2 40	
1231 78		45 00		45			1231 78	7 9 40	
1276 78		45 00		45		1 90	1276 78	7 16 40	
1321 78		45 00		45			1321 78	7 23 40	
1366 78		45 00		45		1 50	1366 78	7 30 40	
1411 78		45 00		45			1411 78	8 6 40	
1456 78		45 00	10 76	56			1456 78	8 13 40	
1512 54		45 00		45		1 90	1512 54	8 20 40	
1557 54		180 00	1 69	1 82		3 40	1557 54	8 27 40	
1739 23		229 97		2.30			1739 23	SEPT 1940	
1969 20		192 77		1 93			1969 20	Oct. 1940	
2161 97		299 78		3 00	(24.61)		2161 97	Nov. 1940	
							2461 75	Dec 1940	

PLAINTIFF'S EXHIBIT No. 13—Continued

NAME CLIFTON BENJAMIN MILLS | S.S. NO. 451-07-7548

ADDRESS 1711 COCKRELL

DATE OF BIRTH DECEMBER 3 1901 | SEX MALE | COLOR WHITE | MARRIED SINGLE MARRIED

PLACE OF BIRTH | PARENTS NAME

WEEKLY WAGES

Form 18-E—1-38—2m | DEPT. BUILDING

OLD BALANCE	HRS.	WAGES	EXTRA	FEDERAL TAX		OTHER DEDUCTIONS	NEW BALANCE	DATE
							1363 75	FORWARD
1363 75		40 00		40		85	1403 75	SEP 12 1939
1403 75		40 00		40			1443 75	SEP 19 1939
1443 75		40 00		40	520 00	1 42	1483 75	SEP 26 1939
1483 75		40 00		40			1523 75	OCT -3 1939
1523 75		40 00		40		85	1563 75	OCT 10 1939
1563 75		40 00		40			1603 75	OCT 17 1939
1603 75		40 00		40		1 42	1643 75	OCT 24 1939
1643 75		40 00		40			1683 75	OCT 31 1939
1683 75		40 00		40			1723 75	NOV -7 1939
1723 75		40 00		40		85	1763 75	NOV 14 1939
1763 75		40 00		40			1803 75	NOV 21 1939
						1 42	1843 75	NOV 28 1939

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1963 75		40 00		40			1963 75	DEC 19 1939
2003 75		40 00		40			2003 75	DEC 21 1939
2043 75		40 00		40		1 42	2043 75	DEC 26 1939
				40	600 00		2083 75	DEC 31 1939
x xx		40 00		40		85	40 00	JAN -9 1940
40 00		40 00		40			80 00	JAN 16 1940
80 00		40 00		40		1 42	120 00	JAN 23 1940
120 00		40 00		40			160 00	JAN 30 1940
160 00		40 00		40			200 00	FEB -6 1940
200 00		40 00		40		85	240 00	FEB 13 1940
240 00		40 00		40			280 00	FEB 20 1940
280 00		40 00		40		1 42	320 00	FEB 27 1940
320 00		40 00		40			360 00	MCH -6 1940
360 00		40 00		40		85	400 00	MCH 12 1940
400 00		40 00		40			440 00	MCH 19 1940
440 00		40 00		40		1 42	480 00	MCH 26 1940
480 00		40 00		40			520 00	APR -2 1940
520 00		40 00		40		2 85	560 00	APR -9 1940
560 00		40 00		40			600 00	APR 16 1940
600 00		40 00		40		1 42	640 00	APR 23 1940
640 00		40 00		40			680 00	APR 30 1940
680 00		40 00		40			720 00	MAY -7 1940
720 00		40 00		40		85	760 00	MAY 14 1940
760 00		40 00		40			800 00	MAY 21 1940
800 00		40 00		40		1 42	840 00	MAY 28 1940
840 00		40 00		40			880 00	JUN -4 1940
880 00		40 00		40		2 85	920 00	JUN 11 1940
						FORWARD		

PLAINTIFF'S EXHIBIT No. 13—Continued

NAME CLIFTON BENJAMIN MILLS | S.S. NO. 451-07-7548

ADDRESS

DATE OF BIRTH | SEX | COLOR | MARRIED SINGLE

PLACE OF BIRTH | PARENTS NAME

WEEKLY WAGES

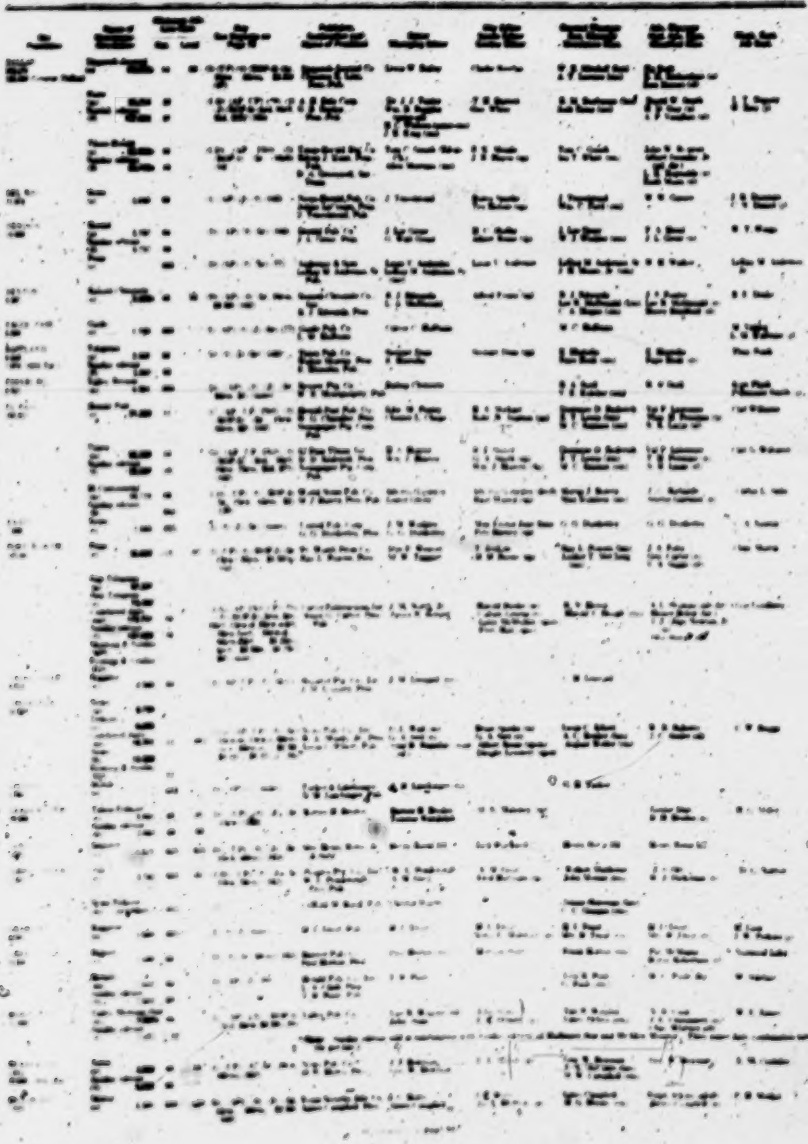
Form 18-E—1-38—2m DEPT.

OLD BALANCE	HRS.	WAGES	EXTRA	FEDERAL TAX		OTHER DEDUCTIONS	NEW BALANCE	DATE
							920 00	FORWARD
920 00		40 00		40			960 00	JUN 18 1940
960 00		2 50		03			962 50	JUN 18 1940
962 50		42 50		43	525 00	1 42	1005 00	JUN 25 1940
1005 00		42 50		43			1047 50	JUL -2 1940
1047 50		42 50		43		85	1090 00	JUL -9 1940
1090 00		42 50		43			1132 50	JUL 16 1940
1132 50		42 50		43		1 42	1175 00	JUL 23 1940
1175 00		42 50		43		42 07	1217 50	JUL 30 1940
1217 50		42 50		43		42 07	1260 00	AUG -6 1940
1260 00		42 50		43		85	1302 50	AUG 13 1940

1345 00		42 50		43		1 42	1430 00	SEP -3 1940
1387 50		42 50		43			1472 50	SEP 10 1940
1430 00		42 50		43		85	1515 00	SEP 17 1940
1472 50		42 50		43			1557 50	SEP 24 1940
1515 00		42 50		43	552 50	1 42	1600 00	OCT -1 1940
1557 50		42 50		43			1642 50	OCT -8 1940
1600 00		42 50		43		85	1685 00	OCT 15 1940
1642 50		42 50		43			1727 50	OCT 22 1940
1685 00		42 50		43		1 42	1770 00	OCT 29 1940
1727 50		42 50		43		1 00	1812 50	NOV -5 1940
1770 00		42 50		43			1855 00	NOV 12 1940
1812 50		42 50		43		85	1897 50	NOV 19 1940
1855 00		42 50		43		1 00	1940 00	NOV 26 1940
1897 50		42 50		43		1 42	1982 50	DEC -3 1940
1940 00		42 50		43			2025 00	DEC 10 1940
1982 50		42 50		43		85	2067 50	DEC 17 1940
2025 00		42 50		43			2110 55	DEC 20 1940
2067 50		43 05	43 05	43			2153 05	DEC 24 1940
2110 55		42 50		43		1 42	2195 55	DEC 31 1940
2153 05		42 50		43	638 05	1 00		
x xx		42 50		43			42 50	JAN -7 1941
42 50		42 50		43		85	85 00	JAN 14 1941
85 00		42 50		43			127 50	JAN 21 1941
127 50		42 50		43		1 42	170 00	JAN 28 1941
170 00		42 50		43			212 50	FEB -4 1941

Plaintiff's Exhibit No. 14.

CIRCULATIONS, RATES AND PERSONNEL OF U. S. DAILY NEWSPAPERS—Continued



Jack Garner Would Approve a Hand Like This

HERE'S the winner when stakes are the Effective Buying Income of Texas' Major Markets—a "pot" of $201,780,000 in 1937, according to Sales Management's 1938 Annual Survey of Buying Power.

To do the job, you'll need every card in the hand The News deals you . . . largest circulation, reader confidence, the prestige of a nationally-recognized "top" newspaper; and last—but not least—the hang-up job in merchandising service which The News does for an advertiser.

Be satisfied in reaching nothing less than the full buying power of this market. Urban Dallas, alone, is only 50 per cent of the pot. GET ALL OF DALLAS!

Sell the Readers of The News and You Have Sold the Dallas Market

The Dallas Morning News

PLAINTIFF'S EXHIBIT No. 16.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PHILIP B. FLEMING, ADMINISTRATOR of the WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, Plaintiff, vs. A. H. BELO CORPORATION, Defendant.	CIVIL ACTION No. 308
A. H. BELO CORPORATION, Plaintiff, vs. G. C. STREET et al, Defendants.	CIVIL ACTION No. 301

STIPULATION

It is hereby stipulated and agreed by and between the parties in the above styled cases, without waiving the right to introduce additional testimony upon the trial of said cases as to subjects covered herein as well as all other subjects, and further without waiving the right to object to the introduction of all or any part of this stipulation as irrelevant or immaterial to issues arising in above styled causes, as follows:

I.

That the A. H. Belo Corporation operates Radio Station WFAA, said station being a 50,000 watt radio broadcasting station; that a contract exists between said

A. H. Belo Corporation and the National Broadcasting Company, Inc., providing that the former will accept, for the purpose of re-broadcasting over said Radio Station WFAA, "network sustaining and commercial programs" produced by said National Broadcasting Company, Inc.; that pursuant to said contractual arrangement A. H. Belo Corporation has accepted and broadcast over said Station WFAA various sustaining and commercial programs produced by the National Broadcasting Company, Inc.; that virtually all of said sustaining and commercial programs provided by said National Broadcasting Company have originated at points in states other than the State of Texas and have been transmitted by the National Broadcasting Company from such points in states other than the State of Texas to the A. H. Belo Corporation in Dallas, Texas, where said programs were broadcast by said A. H. Belo Corporation over Radio Station WFAA; that said programs have occupied approximately forty-five per cent (45%) of the broadcasting time of said Radio Station WFAA since prior to October 24, 1938 to the date hereof; that by reason of the power of said Radio Station WFAA the station is heard beyond the State of Texas and the programs broadcast over said radio station are received in states other than the State of Texas; that such programs, as referred to above, have been broadcast by Radio Station WFAA each day since October 24, 1938, and are still being broadcast; that A. H. Belo Corporation operates said Radio Station WFAA under a license issued to said corporation by the Federal Communications Commission of the United States; that during the period from October 24, 1938, to the date hereof, the A. H. Belo Corporation regularly received advertising copy from points outside the State of Texas and that said advertising copy was broadcast over Radio Station WFAA; that during the period from January 1, 1939 to the date hereof, the A. H. Belo Corporation received "electrical transcriptions" from points in states other than the State of Texas and that said "electrical transcriptions" have been and are broadcast over said Radio Station WFAA;

II.

That by virtue of a contract existing between the A. H. Belo Corporation and the United Press Associations, a corporation, said A. H. Belo Corporation has the "right and privilege of broadcasting vocally carbon copies of day and night leased wire reports" furnished by said United Press Associations over Radio Station WFAA; that pursuant to said contract A. H. Belo Corporation has received information, news and feature stories transmitted to it by the United Press Associations from points in states other than the State of Texas and from points within the State of Texas, and parts or portions thereof have been regularly broadcast over Radio Station WFAA daily since October 24, 1938; that A. H. Belo Corporation also broadcasts daily over said Radio Station WFAA news and information gathered in Texas by employees of said A. H. Belo Corporation.

III.

That A. H. Belo Corporation is a member of the Associated Press, and has been since prior to October 24, 1938; that as a member of said Associated Press it daily receives news reports and information regarding happenings and events throughout the world and feature stories, and comments upon national and international affairs prepared by the Associated Press from which the defendant regularly selects and publishes items in either the original form as received or the substance thereof, in the Dallas Morning News (both the week day and Sunday issues of said newspaper); that approximately seventy per cent (70%) of all such information, news stories, feature stories, and articles of comment so received from said Associated Press originate in states other than the State of Texas, and are transmitted to the defendant in Dallas, Texas, from points in states other than the State of Texas for publication in said Dallas Morning News; that pursuant to the obligations of its membership in the Associated Press the defendant maintains and furnishes the necessary quarters and

power to operate necessary transmission equipment required for the receipt of said information, news stories, feature stories, and articles of comment transmitted to it by said Associated Press from points in states other than the State of Texas, and said quarters and power referred to, furnished by the defendant, are used by said Associated Press in transmitting to points outside the State of Texas information, news stories, and feature articles originating within the State of Texas in the general vicinity of the City of Dallas, Texas; that by reason of the A. H. Belo Corporation being a member of the Associated Press said Associated Press has the right to use, and it does regularly use and transmit to points outside the State of Texas, information, news stories and feature articles prepared and published by the A. H. Belo Corporation in the issues of the Dallas Morning News; that the defendant has been engaged in receiving from and supplying the Associated Press information, news stories, feature stories and articles of comment, as aforesaid, daily since October 24, 1938; that said A. H. Belo Corporation also receives pictures, maps and diagrams and publishes daily in the Dallas Morning News said pictures, maps and diagrams which have been transmitted by wire to said corporation from points in states other than the State of Texas by said Associated Press; that said A. H. Belo Corporation furnishes quarters and power to said Associated Press for the equipment used in receiving such pictures, maps and diagrams; that the quarters and power referred to are also used by said Associated Press in transmitting pictures, maps and diagrams to points outside the State of Texas and that some of the pictures so transmitted are produced by employees of the A. H. Belo Corporation; that the aforesaid Associated Press picture service is called the AP Wirephoto Service; that the Associated Press daily transmits to the A. H. Belo Corporation the daily stock and bond transactions on the New York Stock Exchange, as well as other financial information, from points in states other than the State of Texas and the same is published daily in the Dallas Morning News;

that the A. H. Belo Corporation also receives and publishes daily reports of commodity prices and market conditions, said reports being transmitted to said corporation from points in states other than the State of Texas.

IV.

That pursuant to contracts which have existed between the defendant and the United Press Associations, a New York Corporation, since prior to October 24, 1938, the defendant has received daily from said United Press Associations a "night leased wire service"; that said daily night leased wire service furnished the defendant with information, news tips, news or feature stories, and articles of comment, describing and commenting upon the happenings and events throughout the world, for publication in the Dallas Morning News, and part thereof has been regularly published by the defendant in the week day and Sunday issues of the Dallas Morning News since October 24, 1938; that more than seventy per cent (70%) of said information, news or feature stories, and articles of comment originated at points in states other than the State of Texas and were transmitted to the defendant from said points for the purposes aforesaid by the United Press Associations; that pursuant to the contracts existing between the defendant and said United Press Associations the defendant provides necessary quarters for wire and operator or telephone-typewriter machines or other neeessary transmission equipment and necessary power required for operation of telephone-typewriter machines or other necessary transmission equipment for the receipt of said "leased wire service," and the quarters aforesaid, located in Dallas, Texas, are also used by said United Press Associations for transmitting information, news and feature stories to points outside the State of Texas.

V.

That pursuant to a contract existing between the defendant and the North American Newspaper Alliance,

Inc., the defendant has received, and published almost daily in the Dallas Morning News, since on or before October 24, 1938, news stories, information, feature stories, and articles of comment from said North American Newspaper Alliance, Inc.; that virtually all said information, stories, and comment, received and published in the Dallas Morning News originated outside the State of Texas and has been transmitted to the defendant in Dallas, Texas, by said North American Newspaper Alliance from such points in states other than the State of Texas; that among the articles, stories, and information so received are the daily sports comments of Grantland Rice, and financial and business comment and stories by George T. Hughes;

VI.

That since October 24, 1938, the defendant has regularly received in Dallas, Texas, from points in states other than the State of Texas the copy, proof, matrix forms, etc., of feature articles and cartoons, which are published daily in the Dallas Morning News, and among such feature articles and cartoons the following have been regularly published in said Dallas Morning News; comments on national and international affairs by Ernest Lindley, "These Women" cartoons by d'Allesie, "Aunt Het" cartoons by Robert Quillen, comments and information concerning national and international affairs by Joseph Alsop and Robert Kintner, Hollywood, California, motion picture comment by Sheilah Graham, "Test Your Horse Sense" by Dr. George W. Crane, "Private Lives" cartoons by Edwin Cox, "Daily Cross-Word Puzzle" supplied by Bell Syndicate, Inc., and "Gallup Poll" by Dr. George Gallup, Director of American Institute of Public Opinion;

VII.

That the defendant has regularly received since prior to October 24, 1938, from points in states other than the State of Texas, under contracts existing between

the defendant and various feature syndicates or individuals, such as McNaught Syndicate, Inc., United Features Syndicate, Inc., Bell Syndicate, Inc., the Register & Tribune Syndicate, Publisher's Syndicate, and A. A. Kelleher, the necessary mats, forms, etc., for the following comic strips, which were and are published daily in the Dallas Morning News: Mickey Finn, Li'l Abner, Dan Webster's Career, Jane Arden, Yankee Doodle, Chief Wahoo, Dan Dunn, Secret Operator 48, Bo, Mary Worth's Family, and Jitter;

VIII.

That the defendant regularly receives each week from a point in a state other than the State of Texas copies of a Sunday supplement magazine named "This Week Magazine", published by the United Newspapers Magazines Corporation, and a copy of this magazine is distributed with each copy of the Sunday Dallas Morning News; that defendant has so received this magazine for distribution with the Sunday issue of the Dallas Morning News, each week since October 24, 1938.

IX.

That the defendant has received in Dallas, Texas, each week, since prior to October 24, 1938, from points in states other than the State of Texas from various feature syndicates and individuals, such as McNaught Syndicate, Inc., the Bell Syndicate, Inc., NEA Service, Inc., New York Tribune, Inc., United Features Syndicate, Inc., the Register & Tribune Syndicate, Publishers' Syndicate, and King Features Syndicate, Inc., the matrix forms, copy, etc., which were and are used in publishing in the Comic Section of the Sunday issue of the Dallas Morning News the following comic cartoon strips; Gene Autry; Joe Palooka; Don Winslow and the Navy; Captain Easy, Soldier of Fortune; Out Our Way; Ben Webster; Would You Believe It?; Peter Rabbit; Ella Cinders; Abby an' Slacks; Off the Record; Our Bill; Dixie Dugan; Li'l Abner; Charlie Chan; Yankee Doodle; Mary Worth's

Family; Chief Wahoo; Napoleon; Ginger; Jitter; The Lone Ranger Private Lives, Dan Dunn, Secret Operator 48; Jane Arden; Lena Pry; and Mickey Finn.

X.

That all news and feature stories published by the A. H. Belo Corporation in the Dallas Morning News and the Semi-Weekly Farm News since prior to October 24, 1938 under "date lines" of cities of foreign countries or cities and towns located in states other than the State of Texas have been and are transmitted to the A. H. Belo Corporation in Dallas, Texas, by means of the various instrumentalities of interstate communication from cities and towns located in states other than the State of Texas or in foreign countries;

XI.

That the A. H. Belo Corporation during the months of November and December, 1938, published and shipped to points outside the State of Texas, 112,481 copies of the Dallas Morning News, including both week-day and Sunday issues; that the total net press run for these two months was 6,555,550 copies of said Dallas Morning News; that out of an average daily press run of 107,468, said Belo Corporation shipped an average of 1,844 copies of said Dallas Morning News out of the State each day during said period of time; that during the calendar year 1939, out of a net press run of 40,932,403 copies of the Dallas Morning News, including week-day and Sunday issues, said Belo Corporation shipped 681,886 copies of said newspaper to points outside the State of Texas; that during this period the average daily net press run was 112,143, of which the Belo Corporation shipped an average of 1,868 copies daily to points outside the State of Texas; that during the calendar year 1940, out of a total net press run of 40,869,527 the Belo Corporation shipped a total of 674,737 copies of said Dallas Morning News to points outside the State of Texas; that out of an average daily net press run of 111,638 during this

period, said Belo Corporation shipped 1,848 daily to points outside the State of Texas;

XII.

That during the months of November and December, 1938, the A. H. Belo Corporation published a total of 1,611,948 copies of the semi-Weekly Farm News; that a total of 423,938 copies were shipped by said corporation to points outside the State of Texas during this period; that out of an average issue of 100,737 copies, an average of 26,496 copies were shipped to points outside the State of Texas by said Corporation; that during the calendar year 1939, out of a total net press run of 9,650,152 copies of said Semi-Weekly Farm News, the A. H. Belo Corporation shipped 2,561,128 copies to points outside the State of Texas; that out of an average issue of 100,522 during this period, the average number of copies shipped to points outside the State of Texas was 24,626; that during the calendar year 1940, out of a total net press run of 8,713,036 copies of said Semi-Weekly Farm News, the Belo Corporation shipped 2,408,-304 copies to points outside the State of Texas; that out of an average issue of 90,761 during this period, the Belo Corporation shipped an average of 23,157 copies to points outside the State of Texas;

XIII.

That out of a total sale of 52,986 copies of the Texas Almanac and State Industrial Guide published by the A. H. Belo Corporation during the period from November 1, 1938, to December 1, 1940, 1,704 copies of said Texas Almanac and State Industrial Guide were shipped to points outside the State of Texas by said Belo Corporation;

XIV.

That during the months of November and December, 1938, out of a total of 2,150,264 lines of paid advertising published in the Dallas Morning News by the A. H. Belo Corporation, 352,580 lines, or 16.4 per cent thereof,

was national advertising in that it was advertising products produced outside the State of Texas and distributed within the State of Texas either by the out-of-state producer or local distributors; that during the calendar year of 1939, out of a total of 11,935,470 lines of paid advertising published in the Dallas Morning News by the Belo Corporation 2,248,921 lines, or 18.8 per cent thereof, was national advertising in that it was advertising products produced outside the State of Texas and distributed within the State of Texas either by the out-of-state producer or local distributors; that during calendar year of 1940, out of a total of 12,861,765 lines of paid advertising published in the Dallas Morning News by the Belo Corporation, 2,298,577 lines, or 17.9 per cent thereof, was national advertising in that it was advertising products produced outside the State of Texas and distributed within the State of Texas either by the out-of-state producer or local distributors; that this includes automobile advertising, as well as all other national advertising.

XV.

That during the period from November 4, 1938, to December 31, 1938, the A. H. Belo Corporation published in the Semi-Weekly Farm News 24,000 lines of national advertising and 6,066 lines of local advertising; that during the calendar year 1939, 104,908 lines of national advertising and 46,908 lines of local advertising were published in the Semi-Weekly Farm News by the A. H. Belo Corporation; that during the calendar year 1940, 99,816 lines of national advertising and 42,277 lines of local advertising were published by the A. H. Belo Corporation in the Semi-Weekly Farm News; that as used above the term "national advertising" refers to that advertising published in the Semi-Weekly Farm News which advertised products produced outside the State of Texas and distributed within the State of Texas either by the out-of-state producer or local distributors;

XVI.

That during the period from October 24, 1938 to the

date hereof, the A. H. Belo Corporation regularly received mats, cuts, or copy for such national advertising as referred to in the paragraphs above, numbered XIV and XV, from points outside the State of Texas and the same were regularly used in publishing said advertising in the Dallas Morning News and the Semi-Weekly Farm News (the A. H. Belo Corporation ceased publication of the said Semi-Weekly Farm News December 31, 1940); that mats, cuts or copy for such national advertising were also received by the A. H. Belo Corporation and used in publishing the Texas Almanac and the Industrial Guide.

XVII.

That the A. H. Belo Corporation maintains a news bureau office in Washington, D. C. and that the A. H. Belo Corporation regularly publishes in the Dallas Morning News, including the Sunday issue, information, news stories and feature articles prepared by its correspondent or correspondents in the Washington, D. C. Bureau; that the A. H. Belo Corporation regularly publishes in the Dallas Morning News, information, news stories and feature articles received from its correspondent in Mexico City, Mexico; that said information, news stories and feature articles are transmitted to the A. H. Belo Corporation in Dallas, Texas, from Washington, D. C. and Mexico City, Mexico, by wire or mail facilities.

XVIII.

That since October 24, 1938, to the date hereof, the A. H. Belo Corporation regularly published in the Dallas Morning News, including the Sunday issue, information, news stories and feature articles transmitted to said Belo Corporation by its Austin, Texas, correspondents and its West Texas Office, Central Texas Office and East Texas Office.

XIX.

That during the period from October 24, 1938, to January 1, 1940, the A. H. Belo Corporation purchased

and obtained all news print used in the publication of the Dallas Morning News and the Semi-Weekly Farm News from points outside the State of Texas; that since January 1940, to the date hereof, seventy per cent (70%) of the news print used in the publication of the Dallas Morning News and the Semi-Weekly Farm News (publication of the Semi-Weekly Farm News was discontinued on December 31, 1940) by the A. H. Belo Corporation has been obtained from outside the State of Texas.

XX.

That continuously since October 24, 1938, the employees of the A. H. Belo Corporation engaged in the business of writing, publishing and distributing issues of the Semi-Weekly Farm News, the Dallas Morning News and the Texas Almanac and State Industrial Guide without segregation of labor as to the three different publications; that the employees of the A. H. Belo Corporation continued to work as stated above until December 31, 1940, when said corporation ceased to publish the Semi-Weekly Farm News.

XXI.

That the A. B. Belo Corporation is and has been since prior to October 24, 1938, a member of the American Newspaper Publishers Association and M. M. Donosky, treasurer of said corporation, is a member of the Traffic Committee of said Association; that since on or before October 24, 1938, H. C. Withers, managing editor of the Dallas Morning News, published by A. H. Belo Corporation, has been a member of the American Society of Newspaper Editors.

Dated this 1st day of February, 1941.

Attorneys for A. H. BELO CORPORATION

Locke, Locke, Dyer & Purnell

Attorneys for PHILIP B. FLEMING,
ADMINISTRATOR of the WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR

Gerard D. Reilly

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Llewellyn B. Duke, Regional Attorney

George B. Searls

George B. Searls, Senior Attorney

Robert W. Richards

Robert W. Richards, Associate Attorney

PLAINTIFF'S EXHIBIT No. 17.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PHILIP B. FLEMING, ADMINISTRATOR of the WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, Plaintiff, vs. A. H. BELO CORPORATION, Defendant.	CIVIL ACTION No. 308

A. H. BELO CORPORATION, Plaintiff, vs. G. C. STREET et al, Defendants.	CIVIL ACTION No. 301

STIPULATION

It is hereby stipulated and agreed by and between the parties in the above styled cases, without waiving the right to introduce additional testimony upon the trial of said cases as to subjects covered herein as well as all other subjects, and further without waiving the right to object to the introducion of all or any part of this stipulation as irrelevant or immaterial to issues arising in above styled causes, as follows:

I.

That since October 24, 1938, twenty-eight (28) new Inter-type machines (which are used in the composing rooms to set type) have been added to the equipment

used in the publication of the Dallas Morning News, Semi-Weekly Farm News, and the Texas Almanac and State Industrial Guide, and that all of these machines were obtained from outside the State of Texas;

II.

That seventy per cent (70%) of the gross operating revenue of Station WFAA from November 1938 to December 1939, inclusive, was derived from sales of radio time, paid for by producers or agencies located outside the state of Texas; and that seventy-four per cent (74%) of the gross operating revenue in the calendar year 1940 was obtained from the same source;

III.

That thirty per cent (30%) of the gross operating revenue of Station WFAA from November 1938 to December 1939, inclusive, was derived from sales of radio time in which were advertised products or services originating in whole, or in part, outside of Texas, and products or services originating wholly within Texas, which time was paid for by purchasers located in Texas, and that twenty-six per cent (26%) of the gross operating revenue of Station WFAA in the calendar year 1940 was derived from the same class of sales of radio time;

IV.

That seventeen per cent (17%) of the combined gross operating revenue of the Dallas Morning News and the Semi-Weekly Farm News in the calendar year 1939 was derived from the sales of advertising space paid for by producers or agencies located outside of the state of Texas, and that in the calendar year 1940 sixteen per cent (16%) of the combined gross operating revenue was derived from this source;

V.

That fifty per cent (50%) of the combined gross operating revenue of the Dallas Morning News and the

Semi-Weekly Farm News in the calendar years 1939 and 1940 was derived from the sales of advertising space in which were advertised products or services originating in whole, or in part, outside of Texas and products or services produced wholly within Texas, which space was paid for by purchasers located in Texas.

Dated this 3rd day of February, 1941.

Attorneys for A. H. BELO CORPORATION
Locke, Locke, Dyer & Purnell

Attorneys for PHILIP B. FLEMING,
ADMINISTRATOR of the WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR

Gerard D. Reilly

Gerard D. Reilly, Solicitor

Irving J. Levy

Irving J. Levy, Assistant Solicitor

Llewellyn B. Duke

Llewellyn B. Duke, Regional Attorney

George B. Searls

George B. Searls, Senior Attorney

Robert W. Richards

Robert W. Richards, Associate Attorney

PLAINTIFF'S EXHIBIT No. 18.

Station WFAA

Dallas, Texas

Mr. Nimmons:

New wages and hours regulations went into effect this day.

Letters addressed to employees, showing their basic rate of pay, requiring their signature of acceptance, and to be returned to the employer, should be signed in your department as follows:—

W. Hal Thompson, basic rate raised from	$0.667 to 0.708
W. L. Kurn	0.583 to 0.625
Rosa C. Shalette	0.375 to 0.417

New Members.

F. D. Riss	0.583
E. Baughman	0.75
Paul Lutton	0.667
M. B. Thornton	0.75

Herewith are seven copies of the letters to be read, signed and returned.

(signed) A. Calhoun

10/24/39

C O P Y

J. Raymond Collins:

Dear Ray:

Please see that these notes are in the hands of the persons addressed, and, if they understand and agree, are signed and as soon as possible, returned to this office.

Thanks a lot.

It is to be impressed on the signers that they sign willingly, that there is no change in their hours and pay. It is merely aligning us all with the requirements of the Wages and Hours Act that is effective Sunday night, at midnight, October 24, 1938.

(signed) Calhoun

(This note sent with wage contracts dated 10/22/38.)

C O P Y

Mr. Collins:

Employer rules, that employees, even though they signed last year, must sign this year, if their pay has been increased and consequently the hourly rate changed.

G. N. Willman is a new man and has never signed, I believe, At $42.50 per week his rate per hour, WFAA basis, is $0.708 or 71¢.

Increases have been made for:

P. E. Bostaph,	raising	his	rate	from	67 to 71¢
J. L. Wicker	"	"	"	"	71 to 75
J. P. Hemley	"	"	"	"	71 to 75
D. A. Peterson	"	"	"	"	75 to 79
J. W. Cooper	"	"	"	"	71 to 75
G. M. Howard	"	"	"	"	71 to 75

Herod Johnson, if working 42 hours, must raise to 30¢, making $12.60 or work not over 40 hours.

At Studios

O. S. Brown ..... 71 to 75

Herewith are seven copies of the notice to be signed and returned.

New hours and rates went into effect today—

(signed) A. Calhoun

10-24-39

COPY

October 21, 1938

Mr. Calhoun:

Today or tomorrow, at the latest, we will receive from The News a memorandum regarding the Wages & Hours Bill which goes into effect Monday.

Under the Law it is necessary for all employers to declare a minimum wage scale and to notify each employee. Mr. Moroney or Mr. Donosky will send such a report to you and it is of utmost importance to all concerned that every member of the Staff be notified.

Will you be on the lookout for this, please?

(signed) Martin C. Campbell

cc: Mr. Moroney

COPY

Mr. Campbell:

Re: New hours under Wages & Hours Act

Formula we used last year was $11 : $15 (WFAA Minimum) :: 44 hr.; 60 hr.

We used that 60 hours in ascertaining rate per hour of our employees, dividing the weekly pay by 60 ($45 per week would be 75¢ per hour). We figured overtime after 54.5 hours (time-and-a-half for 16 hours, 44 to 60).

Mr. Taggert tells me there will be no change in estimating on The News Payroll.

I had asked him whether we'd have to raise minimum pay or lower or reduce our maximum hour figure. He said, neither.

New legal rate of 30¢ and 42 hours makes minimum weekly pay $12.60. Not changing our salary structure, it looked to me as if we must use one of these 2 formulas:

$12.60 : $15 :: 42 : 50, making overtime after 47.5 hrs. (1½ time 8 hrs.) or

$12.60 : $18 :: 42 : 60, making overtime after 54 hours (1½ times 18 hrs.).

But Mr. Taggert says we need only raise minimum pay to $15.30 a week. Then all rates and overtime will be figured as now. This minimum is figured on a 48 hour week at $12.60 for 42 hour week.

I'm to see him Tuesday morning to get this formula. 10-16-39

Mr. Campbell: Saw J. and Wilbur this morning. Formula No. 2, above, is correct one. The $18 results from 30¢ an hour for 42 hours, plus 45¢ (time & ½) for 12 hours—or $12.60 plus $5.40, total $18.00, working up to 54 hours. Rates per hour will be worked out same as last year.

(unsigned)

C O P Y

PLAINTIFF'S EXHIBIT No. 19.

Schedules for THE DALLAS MORNING NEWS

The following schedule of forms to be delivered to stereotype department must be maintained on all Editions both daily and Sunday; delivery schedules are posted to enable the makeup department to maintain a steady flow of forms and to prevent crowding. It is to the advantage of all concerned to complete the one form that is due in Stereotype Department at a given time, rather than concentrate on possibly four or five forms and deliver them simultaneously, thereby causing poor workmanship and the possibility of uncorrected reading matter and advertisements.

DAILY SCHEDULE

EARLY EDITION

Starter Time 8.27 P.M.
Schedule for last 10 forms
10—7.50 P.M.
9—7.55 "
8—8.00 "
7—8.05 "
6—8.10 "
5—8.15 "
4—8.18 "
3—8.21 "
2—8.24 "
1—8.27 " Starter

1st CITY EDITION

Starter Time 1.00 A.M.
Schedule for last 8 forms
8—12.32 A.M.
7—12.36 A.M.
6—12.40 "
5—12.44 "
4—12.48 "
3—12.52 "
2—12.56 "
1— 1.00 Starter

STATE EDITION

Starter Time 10.22 P.M.
Schedule for last 5 forms
5—10.10 P.M.
4—10.13 "
3—10.16 "
2—10.19 "
1—10.22 Starter

2nd CITY EDITION

Starter Time 1.18 A.M.
Schedule for last 5 forms
5—1.06 A.M.
4—1.09 "
3—1.12 "
2—1.15 "
1—1.18 Starter

The attention of all is directed to the fact that there is absolutely no leeway in the scheduled starter time mentioned. They must be observed to the letter. A delay of one minute will mean missing some of the mails.

Making a Metropolitan Newspaper

★ *A Trip Through the Plant of The Dallas Morning News*

MAKING A METROPOLITAN NEWSPAPER

SO long has The Dallas Morning News been the leading newspaper of Texas, as well as one of the nation's foremost examples of journalistic enterprise and leadership, that many readers take its excellencies for granted. Yet behind the daily paper laid regularly each morning at your doorstep is to be found a tremendous and continuing outlay of brains, brawn and capital.

No quicker or more fascinating insight into the miracle of modern newspaper making can be gained than by a personal tour of the home office and factory of The Dallas Morning News. By such firsthand inspection the visitor sees the dramatic interplay of men, machinery and materials, out of which the finished product emerges on an endless belt of days and years. Every aspect of newspaper making is charged with color. It is a subject of unending appeal to the public, as witnessed by the constant stream of stories, plays and films depicting the work of reporters, foreign correspondents and editors in their daily race against time and space. But editorial workers are only a battalion in the larger army of newspaper makers. Every department, from the cool and machinelike experts in the bookkeeping division to the vast circulation force hustling the latest edition to its vast number of readers, has its own exciting story.

Nerve Center of the Paper

Our tour begins on the first floor of the office building of The News. Our attention is directed first to four modest rooms adjoining the Commerce Street entrance. These are only partly partitioned off from the larger business office. Although no name-plates or other visible signs indicate the occupants of these offices—or even their significance in the making of The News—this section of the first floor is at once the heart and the brain, the nerve center, of the vast ramifications of a newspaper organization. For we are passing the executive offices, occupied by the president, vice president, secretary and treasurer and business manager—the field marshal and his general staff who direct this large "army" and equipment, through the delegated leadership of the various department heads.

Looking over the large open space of the first floor, with desks and workers crowding every available inch of space, the visitor might not realize that each employee is part of a skillfully subdivided force, each subdivision being concerned with an important phase of newspaper making.

Large Sales Force

To the right are the members of the local advertising staff. These are salesmen led by an advertising director. They call on the hundreds of Dallas business houses whose customers are guided largely by newspaper advertisements in the purchase of more than $250,000,000 worth of goods in Dallas retail stores each year. To the left are members of

the national advertising staff. Through them come advertisements of manufacturers and concerns often located as far away as 1,500 to 2,000 miles. Along the front counter are representatives of the classified advertising department who receive many of the thousand and one "personal" and "want" ads, which constitute one of the greatest community services rendered by a newspaper.

Other divisions of the classified department are located on the second floor.

Advertising, of course, is one of the most popular and widely read of all the features of a newspaper. Many readers forget, however, the big part which advertisements have in also making the newspaper one of the greatest bargains offered to the citizen. Weekly or monthly subscribers to The News pay less than three cents a day for their morning paper. The enormous cost of collecting, editing and printing news, running into many hundreds of thousands of dollars annually, would force the price of a single copy of the newspaper to 60 or 70 cents, were it not for the revenue from advertising.

To handle the large sums, both of income and outgo, required to keep a newspaper in operation, there are the credit and collection divisions of The News, also located on the first floor. From this same bookkeeping department checks are disbursed to the more than 600 employees of The News each week and payments are made for the staggering quantities of white paper, ink and all the other materials and supplies, plus other manifold expenses of operation. These offices extend from the cashier's cage by the front counter to

the door to the office vault and the array of business machines in the rear.

The News' Own "Post Office"

The great volume of mail reaching The News each day calls for a special "post office" within the building, a place where it can be checked in, assorted and then sent to various departments and individuals. The full time of one person, with two or three assistants, is required to handle this flow of correspondence. More than 1,200 individual pieces of mail are received on the average each day. At special times, particularly when some contest is on, this volume reaches 2,500 to 3,000 pieces a day.

Also on the first floor of The News, but separated by a wall partition, is the main office of the circulation department, which is the sales and delivery end of the institution. For operating requirements, a number of divisions of the department are housed in various other parts of The News' plant. Dallas city service operations center on the ground floor and mezzanine area of the mechanical building on the southwest corner of Commerce and Austin streets. The mailing room, where papers are delivered from the press room by vertical conveyors from the ground floor, is located on the second floor of the mechanical building. It occupies nearly 20,000 square feet. The trucking department, with chute and loading docks, operates on the west side of the mechanical building for a distance of 100 feet along Austin Street. Four substations, or residential section offices, are maintained in North, East and South Dallas and Oak Cliff.

Vast Circulation System

It is interesting to realize that eighty trucks and motorcars, electric and steam trains and busses distribute copies of The News over fifty-one square miles in Dallas and cover a service area of more than 22,000 square miles in Texas, mostly within or near the suburban trading area of Dallas. Eighty motorcars travel 8,000 miles each morning between 2 and 6 o'clock. Copies of The News are on front porches, before breakfast, as far distant as Gainesville, Texarkana, Lufkin, Austin and Abilene. It has been estimated that 450,000 persons read The Dallas News each day. To reach this number of people by first-class United States mail would require $11,500 worth of stamps each day.

Workers in the circulation department, in a year's time, handle in excess of twenty-one million pounds of finished newspapers. More than 3,000 sacks of United States mail are sent out from The News' building to distribute papers still handled by that method. At the same time, 2,400 men and boys handle copies of the paper each day. Excepting those sent by mail to subscribers, all copies of The News are bought and resold by independent distributors, such as boy merchants, street vendors and newsstands.

One of the most ingenious and remarkable operations in the circulation department is that of the stencil department, to be found in the city service department in the mechanical building. There a series of four, almost human, machines print the names of the vast number of mail subscribers to the daily and Sunday issues of The News and The Semi-Weekly Farm News. The printing is on enve-

lopes and single wrappers. It is done from small, typewriter-cut cloth stencils made by four young women who give their full time to this work. By a system of punches on the margin of the stencils to which they are geared, the machines automatically throw out the names of subscribers as expiration dates occur. Constant new stencil cutting is required, due to the great number of changes of addresses occuring all the time among so many subscribers.

Editors at Work

Leaving the business and circulation departments behind we go next to the second floor of The News where the offices of the editor in chief and various other editors and columnists are to be found.

In this day when news from the four corners of the globe is flashed to a paper with the speed of lighting, the modern reader demands, along with the hot news story, unusually able commentary and interpretation. To answer this insistent question of Why? — What's Behind the News?—an editorial page and numerous interpretive articles by specialists are created each day in The News' own plant. Only a minimum of "canned," or syndicated matter is used in Texas' leading newspaper. On its staff are experts specially fitted to discuss and to cartoon foreign affairs, national developments, farm and ranch problems and all the other economic, social and cultural matters vitally affected by a fresh outbreak of war in Asia, or a new decision at Washington, or the latest proposal from Austin or even a tornado at the doorstep of Dallas.

To provide editors with facilities for quick

and accurate research on all current problems, The News maintains a large, specially equipped library on the second floor. Here the latest reference works covering all aspects of human knowledge and interests are readily accessible. In addition, special treatises in book and pamphlet form on particular subjects fill row on row of the shelves around the wall.

Keeping Track of the Past

Because today's news stems directly out of the past, either the past of only a few hours ago or of a more remote time, The News library has an elaborate setup of records concerning what happened yesterday, day before yesterday, last month and thus on back for more than fifty years. News clippings by subject matter on events of the last few years are kept for ready reference in steel filing cabinets. A card index system guides the researcher into the bound volumes of The News, more than 200 volumes of which, containing every issue of the paper since its first on October 1, 1885, are stored in a fireproof, air-conditioned vault in the library.

The News in recent years has also begun the reproduction of its fifty-year-old file by means of micro-film photography. This is a marvelous space-reducing method whereby an entire page of a newspaper is photographed on a film scarcely larger than a postage stamp. Strung together in a continuous roll resembling a movie film, these reels are so compact that images of the contents of several hundred volumes of the file are contained in a steel cabinet measuring only a few feet in each dimension. A magic-lantern like machine pro-

jects any part of the roll of film for easy reading.

The News library reminds the visitor of the daily book column and the Sunday book page which its reviewers conduct for the pleasure and benefit of the large reading public of the Southwest. The book reviewing department affords late news and comment on almost 1,000 of the outstanding books published each year.

Other Publications of The News

Also located on the second floor are the editorial offices of both The Semi-Weekly Farm News and the Texas Almanac and State Industrial Guide. The promotion department for all publications is likewise on this floor. Unlike the doctor who refuses to take his own medicine, the newspaper is a great believer in advertising for itself, as well as for its customers. The promotion department in reality is The News' own advertising department and directs the creation and placing of "copy" in various mediums telling about the work of The News and associated enterprises.

Many visitors find a hand-lettered, gold-framed scroll in the hallway of the second floor of more than passing interest. This document dates from October 1, 1935, the occasion of the Golden Jubilee of the newspaper. It is a testimonial to the president of The News in recognition of his pre-eminent part in the start and development of The Dallas Morning News, and contains the signature of every employe of The News at the time of the fiftieth anniversary.

Every two years when county, state and congressional races are held, the second floor

of The News also houses the Texas Election Bureau headquarters. To it a corps of workers in each of the 254 counties of Texas send frequent returns from the polls with amazing rapidity. Telephone, telegraph and fleet-wheeled messengers are used to convey these returns to headquarters where thirty-five tabulators, statisticians and interpreters reduce the maze of figures to bulletins and summaries. Formerly The News set up its own State-wide organization to collect these results, but for a number of years now it has been joined with other daily newspapers to operate jointly this co-operative election bureau.

Handling the News

Proceeding to the third floor we reach the news-gathering room, which is presided over by the managing editor and the associate managing editor. These highest ranking officers in the news room direct and coordinate the collection and editing of all telegraph and local news.

The large part of the news department is known as the city room. Here are to be found the staff of sixteen local reporters, with their desks, typewriters, individual telephones and other equipment. What happens to our immediate neighbors and to ourselves is always of paramount interest. The News insists on complete local coverage of Dallas. Its local staff is the largest of any newspaper in Texas.

On the left, against the north wall, is the city editor's desk. The city editor is the field marshal who directs the local staff, deploying his trained reporters at strategic points throughout the metropolitan area—at the city hall, the police station, the emergency hos-

pital, the courthouse, banks, railroad offices, the Chamber of Commerce, football and baseball games, special mass meetings, purely social gatherings; any and all places where news may be expected to happen.

The city staff reports to the city editor early each afternoon. Each reporter reads the daily assignment sheet and checks his orders for the day. The reporters then leave to cover their runs and are busy outside until later in the day when they return, bringing their portions of the news in the form of penciled notes. Soon their typewriters are hammering out reports on the activities of a busy metropolis. The peak of local news writing takes place before the dead lines of the various editions, although most local news is in type by midnight.

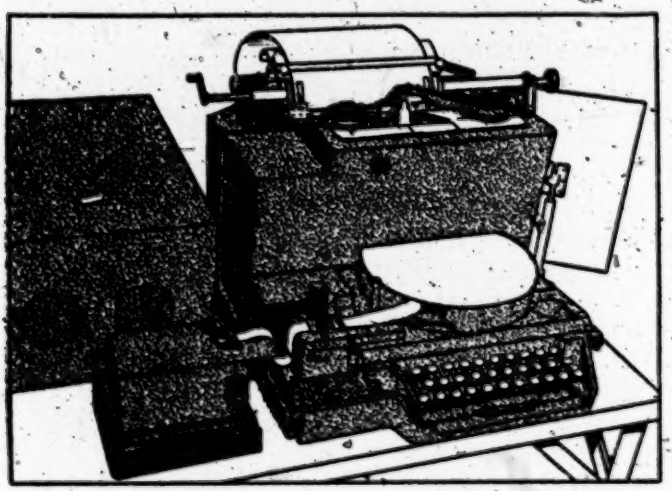
World's Greatest News Agency

Meanwhile news from over Texas, from the United States at large and from beyond the seas starts arriving on the third floor and is channeled to the telegraph desks in the news room. The bulk of this outside news is received in the quarters of the Associated Press, which we note as we pass to the east end of the third floor room. The Associated Press is the greatest news gathering agency in the world, with more than 40,000 member papers and correspondents in all parts of the globe, on whom, literally, the sun never sets. The News is the only paper in Dallas which carries the full, seven-day a-week service of the Associated Press.

If your tour takes us into the Associated Press room near press time, the sound and clatter of twenty-five electric teletype ma-

chines and telegraph instruments may be confusing to the visitor but never to the efficient AP editors who receive this torrent of news. Thousands of words of world intelligence are pouring in at the rate of sixty words a minute on the teletype machines. Typed out electrically on endless rolls of yellow copy paper, these dispatches are cut off in "takes" and sent to the telegraph editors of The News.

Beside the Associated Press, The News also receives scores of news stories each day from



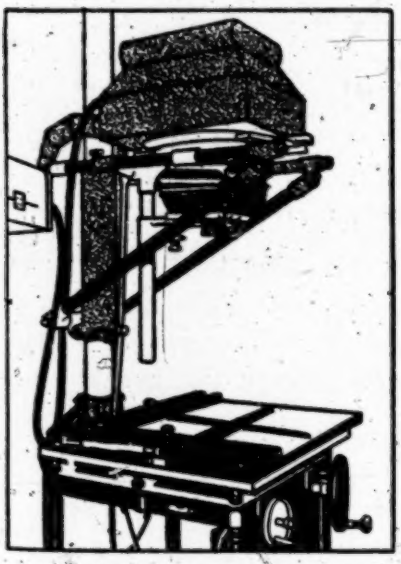
the United Press, the North American Newspaper Alliance and over its own special leased wires from Austin and Washington. More than 200,000 words of news from all over the world reach The News each day. From this great mass the telegraph desk culls and prints the most important or interesting 40,000 to 50,000 words each day.

Re-entering the news room from the Associated Press office we see, on the right, the door into the biographical department. There in long rows of steel, fireproof cabinets are filed more than 180,000 photographs and packages of biographical notes of as many

Dallasites, Texans and prominent citizens of the world at large. To keep this "morgue" constantly up to date, four people give their full time. The telephone PBX, or central switchboard, is also located in the biographical department. There are more than 100 separate telephone connections within the building.

Pictures Tell the Story

Continuing northward along a passageway on the third floor we visit next the laboratories and studio of the photographic department. Today, with readers more visual minded than ever before, pictures contribute one of the most important parts in the make-up of a newspaper. New developments are being made all the time in photography, and The News has kept in the vanguard of these developments. Three expert photographers, working on assignments from the city editor, bring or send their films and plates to the laboratory where a fourth staff member develops and prints the pictures. An interesting device in the printing room is the auto-focus projector which enables the operator to make any desired size of the finished



print by a simple and instantaneous adjustment of the projector.

Later in this tour, in another part of the building, you will see the Associated Press Wirephoto. This is an electro-chemical mechanism which enables The News to receive and send pictures by wire and radio, to and from all parts of the world. The News was the first newspaper in Texas to contract for this service, and it is today the only newspaper in the state with full, seven-day-a-week Wirephoto service.

Across from the photographers' rooms are The Dallas News offices of the United Press. There equipment similar to that in the Associated Press office is in daily operation. Down the short passageway to the left are the offices of the amusement and arts department of The News, as well as of the rotogravure editor. There are stored thousands of pictures, notably of movie and radio stars, many of the photographs dating back to the earliest days of the two industries.

Reading the Copy

Returning now through the main news room, our attention is directed to the second stage in the preparation of news for printing. Termed the reading and editing of the copy, this is less spectacular than the gathering of news. Here you will find ten editors, or copyreaders, engaged in the task. Every line written by a reporter or sent in by news agencies and correspondents must be read carefully for spelling, punctuation and grammatical construction.

If necessary, the copyreader will also condense or rewrite portions of the news story

under his gaze in the interest of greater clarity or conciseness. Next, headlines and subheads must be written for each story. Then, and only then, is the completed news story ready for the next step in newspaper publishing. It is carried by the copy boy to the automatic tubes where it is shot in small carriers by compressed air to the composing room in another part of the building.

The reproduction of photographs in the newspaper calls for another step than that in transfering reading matter into type. This is known as photo-engraving, by which the photograph is duplicated on a metal plate. The work is done in a large plant near by, to which all pictures are sent. There glass negatives are first made, from which the image is reprinted on a chemically treated metal. The plate is then given a chemical bath which eats away part of the surface of the metal with the exception of image. The latter consists of an infinite number of small dots which alone pick up the ink in the printing process and thereby give the newspaper reproduction.

On the Assembly Line

To most visitors the next part of our tour is usually the most interesting. For we now enter the factory, or mechanical department of the building. In many ways this presents an extended assembly line, much as in any other modern factory.

The start of the assembly line is in the composing room on the third floor. Once all type was set by hand, a long and laborious process. If an average edition of The News were set today by hand, as it was only so short a time ago as fifty years, it would require more than

200 compositors to do the job. Today, thanks to the wizardry of typecasting machines—the linotype and the monotype—the same job can be done quicker and at less expenditure of human effort.

But even today, at peak periods, the composing room reveals a scene of great activity. The battery of twenty-five typesetting machines, each manned by a skilled operator seated before what looks like a huge typewriter keyboard, first catches the attention. The sure touch of the operator on his keyboard taps out a series of lines of freshly molded type. He works directly from the pages of typewritten copy which has been forwarded from the news room.

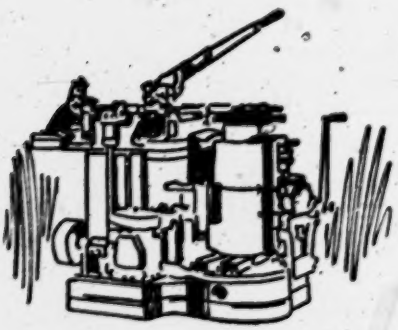
After each news story has been set up in type it must be tested first against possible errors. Proofs are pulled in galley length and sent up with the original copy to the proofroom on the mezzanine floor. There eight proofreaders make the final check before the story is sent to the "make-up" men.

When the final and revised proofs have been okayed by the proofreaders, the actual arrangement of stories and advertisements on each page begins. This assembly, page by page, is carried out on a series of iron tables about waist high, which you will see occupying a large part of the composing room. For each page a heavy iron frame of the exact size and shape of a newspaper page is laid on the table. An editor from the news room stands on one side, with an expert from the composing room on the other. At the editor's direction the make-up man lifts the various stories from the galleys of type in the order desired

and places them by columns within the iron frame.

Why Stereotype?

It would be possible, of course, to print The News from these flat beds of type. But not on the high-speed cylinder presses which a metropolitan paper must use, as contrasted with the presses of smaller newspapers which operate at a speed of only about 4,000 impressions an hour. Since an ordinary edition of The News runs many times that number of copies, and since such an edition must be completed within three hours, it is obviously impractical to print The News from flat beds of type.



To overcome the handicap of time element, each page is next stereotyped. This is done in the stereotyping department on the third floor where hard metal duplicates, or plates, are reproduced from the beds of type. The process requires, first, a thick slab of paper, resembling a desk blotter and called a matrix, be placed over the form of type. Matrix and type are then run through a pressure machine which subjects both to a pressure of several pounds per square inch. The matrix is now used in a casting box where hot, poured metal fills up all the crevices in the matrix to give a duplicate surface. The mold is curved so that the printing plate is half of a circle when it is cooled and ready

for the press. The presses are so designed that, when castings are attached in page duplication, the cylindrical form is completed. The speed with which the entire stereotyping process is done is startling when you watch the complicated operation. In times of great haste a page of type can be stereotyped in The News within six or seven minutes.

The final step in the assembly line of newspaper printing takes place in the pressroom, two flights below. It is possible only after a plate for each page has been sent down from the stereotyping room by elevators.

Dispatching Readers' Copies

On our way to the pressroom we make a short detour on the second floor. To the left of the entrance passageway is The News' lunchroom, maintained on a nonprofit basis by the management for the convenience of employees.

To the right is found the mailing room of The News. Remember, this second floor of the mechanical building has the composing and stereotyping rooms above and the pressroom below. We are anticipating somewhat, therefore, a logical sequence in newspaper making, since the mailing room receives the papers only after they have been printed.

The printed sections of the paper are lifted from the presses by an endless chain or vertical conveyor to the mailing room. Here the various sections, running as high as seven or eight on a Sunday issue, are assembled by hand and stacked in large bundles for city and suburban delivery, or folded, wrapped and addressed by machine if they are to go to mail subscribers. A corps of thirty-five

mailing room employees under the direction of a superintendent carry out these essential operations. The mailing room, it should also be kept in mind, is the key point in the dispatching of the entire edition of The News to its readers. Sacks of mail are sent direct from the News Building to departing trains, trucks and interurbans, saving the time involved in sending this matter through the Dallas postoffice.

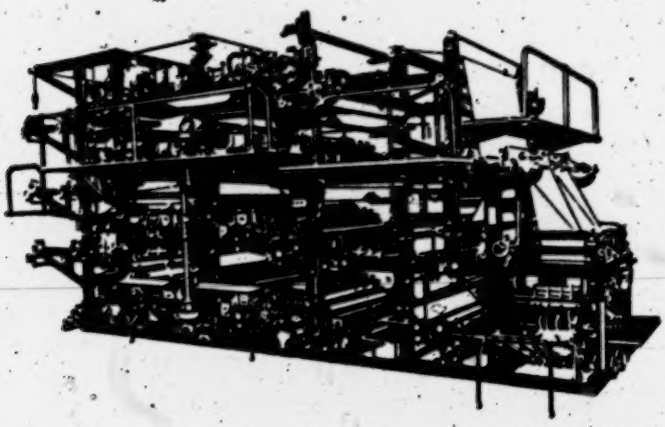
Continuing one flight lower, we enter next the observation gallery of the pressroom. The series of four main presses are now in view. If we arrive just before press time we can see the pressmen receiving the last of the stereotype plates and making last-minute adjustments as these are locked on the cylinders. The presses have all been well oiled and inspected, the long rolls of news print have been threaded through the press.

Miles of White Paper

The rolls, or "webs" of print paper, are hinged on rollers behind the presses. White paper constitutes one of the great raw materials in newspaper making. These rolls weigh three-quarters of a ton each, and The News uses 12,000 tons of white paper a year, at the rate of a carload a day. One roll of paper will move a continuous sheet four pages wide and five miles long. It takes about 176 miles of such paper to print an average weekday issue; 496 miles of paper for a Sunday issue, not including the rotogravure and the magazine section, This Week, which are printed elsewhere.

Fir and spruce wood pulp are used to make

newsprint, which is now produced thousands of miles from Dallas and Texas. The News' supply originates chiefly in the Pacific Northwest region and is brought by steamer through the Panama Canal to Texas gulf ports, where it is shipped by freight to Dallas. Some day in the not distant future it is expected that East Texas' own pine lands will furnish enough slash pine, out of which a Southern newsprint industry will flourish. As a matter of fact, the first newsprint mill in the South is at the present time (1939) in process of construction at Lufkin, Texas.



Presses in action must be seen to be appreciated as a thrilling spectacle. To newspaper workers and visitors alike the pressroom is the dramatic climax in newspaper making. From the observation gallery you can see the final perfection of the machine in action. The News' presses are driven by motors with the electrical equivalent of the power of 270 horses. In the deafening noise the pressman can hardly be heard by his fellow worker, but each expert is familiar with a sign language that enables each man at his post to co-ordinate the running of this vast, whirling mechanism.

A City Underground

From the press room we continue downward into basement and subbasements of the power room and various storage rooms, all constituting a veritable underground city. Numerous machines and switchboards controlling power, heating and lighting for the entire building are to be seen here. But our main objective is to inspect the storage of newsprint which is gobbled up in almost steam shovelfuls daily by the insatiable presses. Newsprint is unloaded outside from motor trucks on the sidewalk of Austin street and lowered by elevator to the basement, where it is stored in a space measuring sixty by eighty feet. A traveling crane is used to pick up and deliver these rolls to the press room above. A three-days' supply of newsprint is kept in storage in The News Building at all times.

It is fitting that the last item on our tour should be the latest wonder of the newspaper world—the Associated Press Wirephoto. This equipment is located on the ground floor of the mechanical building and is reached through a separate entrance from the Austin Street side. The Wirephoto room is a station on a nation-wide hook-up of telephone lines. The telephone lines enable the operators and receivers to talk with one another about pictures being transmitted. The same lines carry the magical impulses which transport a picture from one side of the country to another.

The receiving set, as you will note, is a tubelike instrument in which sensitized photographic film revolves on a drum in a lightproof box. This is the same kind of film used for an ordinary photographic negative. But where, in photography, the negative is exposed

all at once, the Wirephoto image is built up more slowly, one fine line at a time, as the focal point moves slowly across the revolving drum. The exposure is controlled by a "light valve" which translates the electrical impulses of the telephone line into the light and shade of the final picture. The process is reversed, of course, for the sending of a picture.

Let us end this tour with the roar of the presses in our ears and with the rhythmic procession of newsprint in our eyes. All the professional skill of writers and artists comes to a focus in the factory processes represented in the sweep of the seemingly endless strip of paper through the presses; and in the swift sliding of bundles of newspapers through chutes in "delivery-truck alley."

Two of the great branches of modern industry are represented here — production and distribution. To make a meritorious, wanted product and to deliver it on time are basic factors in any successful business. News is a perishable product — even more so than fish, butter or eggs; hence *time* is an all-important factor in its processing and delivery.

Think of your newspaper in terms of your daily life. Your breakfast is quite spoiled if your morning paper is not at hand. Hence presses roar and delivery trucks glide swiftly on rigid schedules long before sun-up, so that you may start your day right!

Regardless of rain, wind, sleet, ice, mechanical mishaps and late news flashes, gears must mesh, motors must hum, wheels must roll swiftly—The Dallas Morning News must be on time! And the thousands of physically fit and mentally alert men and boys, the reliable distributors, see to it that this is done.

Oldest Business Institution

In making this tour it may be of interest to note that you have been visiting the oldest business institution in Texas. Founded in Galveston on April 11, 1842, while Texas was a Republic and established in Dallas on October 1, 1885, The News has almost a century of accumulated experience behind its operations.

Those who wish a fuller understanding of the history of The News and its part in the development of Dallas and Texas are referred to "35,000 DAYS IN TEXAS," a full-length, attractively illustrated book published by the Macmillan Company and on sale at all bookstores.

Visitors to Dallas or persons living in the city are cordially invited to visit The News building where, at stated intervals, conducted tours are made daily.

Title 29, Chapter V
Code of Federal Regulations
Part 516

Regulations on Records To Be Kept by Employers

Pursuant to Section 11 (c)
of the Fair Labor Standards Act of 1938
(52 Stat. 1060)

AUGUST 1940

See also "Employers' Digest," Sections 14 to 30 inclusive
and Sample Pay-Roll Form

UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

Part 516

Regulations on Records To Be Kept by Employers Pursuant to Section 11 (c) of the Fair Labor Standards Act [1]

Section 516.1—Records Required.

Every employer subject to any provisions of the Fair Labor Standards Act or any order issued under this act shall make and preserve records containing the following information with respect to each person employed by him, with the exception of those specified in sections 13 (a) (3), 13 (a) (4), 13 (a) (5), 13 (a) (6), 13 (a) (8), 13 (a) (9), and 13 (a) (10) of the act:

(*a*) Name in full.

(*b*) Home address.

(*c*) Date of birth if under 19.[2]

(*d*) Hours worked each workday and each workweek.

(*e*) Regular rate of pay and basis upon which wages are paid.[3]

(*f*) Wages at regular rate of pay for each workweek, excluding extra compensation attributable to the excess of the overtime rate over the regular rate.[3]

(*g*) Extra wages for each workweek attributable to the excess of the overtime rate over the regular rate.[3]

(*h*) Additions to cash wages at cost, or deductions from stipulated wages in the amount deducted or at the cost of the item for which deduction is made, whichever is less.[4]

(*i*) Total wages paid for each workweek.

(*j*) Date of payment.

Provided, however, That with respect to employees specified in section 13 (b) of the act, records referred to in paragraphs (*f*) and (*g*) of this section shall not be required; and

Provided further, That with respect to employees who are specified in section 13 (a) (2) of the act, and employees who are defined in regulations of the Wage and Hour Division, Part 541 (regulations defining and delimiting the terms "any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman" pursuant to sec. 13 (a) (1) of the Fair Labor Standards Act) employers need make and preserve records containing the following information only:

(*a*) Name in full.

(*b*) Home address.

(*c*) Occupation.

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[1] Issued under the authority contained in sec. 11 (c), 52 Stat. 1060.

[2] As corrected by a notice approved by the Acting Administrator on November 9, 1939, and published in the Federal Register November 10, 1939.

[3] These three items of information are only required when overtime is worked by the employee.

[4] This information is required only where the cash wage actually paid is less than the minimum wage required by the act. The reasonable cost of board, lodging, and other facilities as part of wages, is defined and delimited by regulations of the Wage and Hour Division: Part 531, regulations determining the reasonable cost of board, lodging, and other facilities pursuant to section 3 (m) of the Fair Labor Standards Act. This matter is dealt with further in Interpretative Bulletin No. 3 of the Wage and Hour Division.

Provided further,[5] That with respect to employees employed or purported to be employed by an employer in pursuance of the provisions of section 7 (b) (1) or section 7 (b) (2) of the Fair Labor Standards Act, employers shall comply with each of the following additional requirements:

(*a*) Keep and preserve a copy of each collective bargaining agreement which entitles or purports to entitle an employer to employ any of his employees in pursuance of the provisions of section 7 (b) (1) or section 7 (b) (2) of the Fair Labor Standards Act.

(*b*) Report and file with the Administrator at Washington, D. C., within 30 days after such collective bargaining agreement has been made, a copy of each such collective bargaining agreement. Likewise, a copy of each amendment or addition thereto shall be reported and filed with the Administrator at Washington, D. C., within 30 days after such amendment or addition has been agreed upon. If any such collective bargaining agreement, or amendment or addition thereto, was made prior to the 25th day of April, 1939, a copy thereof shall be reported and filed with the Administrator at Washington, D. C., on or before the 26th day of May, 1939. The reporting and filing of any collective bargaining agreement or amendment or addition thereto shall not be construed to mean that such collective bargaining agreement or amendment or addition thereto is a collective bargaining agreement within the meaning of the provisions of section 7 (b) (1) or section 7 (b) (2).

(*c*) Make and preserve a record designating each employee employed pursuant to each such collective bargaining agreement and each amendment and addition thereto.

(*d*) (1) In the case of each such collective bargaining agreement which provides that no employee employed in pursuance of the provisions of section 7 (b) (1) shall work more than 1,000 hours "during any period of 26 consecutive weeks" and specifies a 26-week period, make and preserve a record of the total hours worked during the specified 26-week period by each such employee.

(2) In the case of each such collective bargaining agreement which provides that no employee employed in pursuance of the provisions of section 7 (b) (1) shall work more than 1,000 hours "during any period of 26 consecutive weeks" but does not specify a 26-week period, make and preserve a record of the total hours worked during each of the 26-week periods after each week of operation under the agreement by each such employee.

Provided further,[6] That with respect to employees employed in occupations in the performance of which the employee receives tips or gratuities from third persons which are accounted for or turned over by the employee to the employer, additional records containing the following information with respect to each such employee shall be made and preserved by the employer:

(*a*) Total hours worked each workweek in occupations in the performance of which the employee receives tips or gratuities from third persons.

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[5] This provision of section 516.1, approved by the Administrator June 10, 1940, and published in the Federal Register June 18, 1940.

[6] Whether a contract requiring employees to account for tips is legal is a question for the courts to decide. The Wage and Hour Division is not taking a position on this question, but is requiring records that will protect both employer and employee whatever the ultimate judicial decision on the validity of such contract may be.

(*b*) Total hours worked each workweek in any other occupati

(*c*) Wages paid each workweek for hours worked under (*a*) abo

Provided, however, That if the employer claims as wages paid t amount of any gratuities or tips voluntarily paid to the employee b third persons and accounted for or turned over by the employee the employer, such amounts must be recorded in a separate colum from that in which any other compensation is recorded.

(*d*) Wages paid each workweek for hours worked under (*b*) above *Provided, however,* That if the employer claims as wages paid th amount of any gratuities or tips voluntarily paid to the employee b third persons and accounted for or turned over by the employee t the employer, such amounts must be recorded in a separate colum from that in which any other compensation is recorded.

Provided further,[1] That with respect to any employee, subject to different minimum wage rates of pay one or more of which has been established by a wage order, who is paid an amount less than the highest applicable minimum wage rate for all hours worked in any workweek, employers shall keep and preserve a record for each workweek of the following additional information:

(*a*) The minimum rate of pay required to be paid for each type of goods upon which each such employee has worked.

(*b*) Each type of goods upon which each such employee has worked at a different minimum rate of pay.

(*c*) The hours worked, or fractions thereof, by each such employee each workday and each workweek on each type of goods upon which he has worked at a different minimum rate of pay. Hours worked, or fractions thereof, on each type of goods shall include time from the commencement of work on such type of goods until work is commenced on another type of goods for which such employee must be paid at a different minimum rate of pay.

(*d*) The piece rate, if any, for each operation upon each type of goods upon which each such employee works at a different minimum rate of pay and the number of pieces worked upon at such piece rates.

(*e*) The piecework earnings, if any, on each type of goods upon which each such employee has worked at a different minimum rate of pay.

(*f*) The lot number of each type of goods upon which each such employee has worked.

(*g*) The total wages due the employee at straight time for the hours worked on each type of goods upon which each such employee has worked at a different minimum rate of pay, including the amounts earned in excess of the applicable minimum rates of pay.

Following the completion of the first month of keeping records in accordance with the foregoing provisions, every such employer may elect to keep records on this basis only if, in the event that he thereafter ceases or fails to do so for any workweek and later resumes the keeping of such records, he does so after a lapse of at least 2 months and gives written notice of such resumption to the Wage and Hour Division.

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[1] This provision of section 516.1 approved by the Administrator August 1, 1940, and published in the Federal Register August 2, 1940.

The foregoing provisions shall not be construed to affect in any way the records to be kept, or compensation to be paid employees whose activities cannot be segregated (such as clerical and maintenance employees), and who are, therefore, not subject to different minimum wage rates of pay.

(This section as amended, except as otherwise noted, approved by the Administrator October 13, 1939, and published in the Federal Register October 14, 1939.)

Section 516.2—Form of Records.

No particular order or form is prescribed for these records, provided that the information required in section 516.1 is easily obtainable for inspection purposes.

Section 516.3—Place and Period for Keeping Records.

(a) Each employer shall keep the records required by section 516.1 at the place or places of employment, or at one or more established central record keeping offices where such records are customarily maintained.

(b) All records required by section 516.1 shall be kept safe and readily accessible for a period of at least four years after the entry of the record. All such records shall be open to inspection and transcription by the Administrator or his duly authorized and designated representative at any time. Where the records required by section 516.1 are maintained at a central record keeping office, other than at the place or places of employment, such records shall be made available at the place or places of employment within 72 hours following notice from the Administrator or his duly authorized and designated representative.

(This section, as amended, approved by the Administrator June 1, 1940, and published in the Federal Register June 4, 1940)

Section 516.4—Definitions of Terms Used in These Regulations.

(a) Act.—The Act means the Fair Labor Standards Act of 1938.

(b) Hours worked.—For the purpose of these regulations the term hours worked shall include all time during which an employee is required by his employer to be on duty or to be on the employer's premises or to be at a prescribed workplace.

(c) Workday and workweek.—For the purposes of these regulations, a workday with respect to any employee shall be any 24 consecutive hours, and a workweek with respect to any employee shall be 7 consecutive days, provided that the workday or workweek is not changed for the purpose of evasion of provisions of the act or any regulations prescribed pursuant thereto.

(d) Wage or wages.—For the purposes of these regulations, the term wage or wages means all remuneration for employment of whatsoever nature whether paid on time work, piece work, salary, commission, bonus, or other basis.

(e) Employee.—The term employee is defined by the act (Sec. 3 (e)) to include any individual employed by an employer, and the term employ is defined by the act (Sec. 3 (g)) to include to suffer or permit to work. It shall be the duty of each employer to make and preserve all records required under these regulations with respect to each employee employed by him, whether or not such employees perform their work in an establishment or plant operated by the employer or subject to his immediate supervision. Thus, the required records shall be made and preserved by the employer for industrial home workers or other employees who produce goods for the employer from

material furnished by him or who are compensated for such employment at piece rates, wherever such employees actually perform their work.

(f) Regular rate of pay.—For the purpose of these regulations, the term "regular rate of pay" means:

(i) with respect to an employee paid solely on an hourly basis (i. e., receiving no additional wage whatever) the hourly wage rate at which he is employed.

(ii) with respect to an employee employed on a daily, weekly, semimonthly,[8] or monthly [8] basis for a regular number of hours per week determined by agreement or custom; the average hourly rate [9] obtained by dividing the wages [10] earned for that regular number of hours in the workweek by that regular number of hours; and

(iii) with respect to an employee paid on any other basis than those specified in (i) and (ii) of this paragraph (f), the average hourly rate [9] obtained by dividing the wages [10] earned for the particular workweek by the total number of hours worked during that workweek.

Section 516.5—Petition for Amendment of Regulations.

Any person wishing a revision of any of the terms of the foregoing regulations on records to be kept by employers (secs. 516.1 through 516.4) may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If upon inspection of the petition the Administrator believes that reasonable cause for amendment of the regulations is set forth, the Administrator will either schedule a hearing with due notice to interested parties, or will make other provisions for affording interested parties an opportunity to present their views, both in support and in opposition to the proposed changes.

(The foregoing sections, except as noted, approved by the Administrator October 21, 1938, and published in the Federal Register October 22, 1938.)

Section 516.90—Regulations on Records To Be Kept by Employers of Industrial Home Workers, Pursuant to Section 11 (c) of the Fair Labor Standards Act.

Every employer subject to any provisions of the Fair Labor Standards Act or any order issued under this act who directly or indirectly distributes work to be performed by an industrial home worker shall be relieved of the provisions for record-keeping contained in sections 516.1, 516.2, 516.3, and 516.4 (b) of these regulations with respect to such industrial home worker and shall, in lieu of such requirements, make and preserve, records containing the following in-

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[8] With respect to an employee paid on a monthly basis, the wages earned during a workweek are computed by multiplying the monthly wage by 12 and dividing the result by 52. With respect to an employee paid on a semimonthly basis, the wages earned during a workweek are computed by multiplying the semimonthly wage by 24 and dividing the result by 52.

[9] In computing the average hourly rate fractions of less than one-half cent may be disregarded, and fractions over one-half cent should be raised to the next, full cent.

[10] In computing the average hourly rate all wages earned or paid during a particular workweek must be included except:

(a) Bonuses not computed on the basis of measured work performed (e. g., bonuses for punctuality, simple Christmas bonuses, etc.),

(b) Extra compensation attributable to the excess of the overtime rate over the regular rate, and

(c) Additions to the cash wage for board, lodging, or other facilities furnished by the employer.

formation with respect to each such industrial home worker engaged on work distributed directly by such employer or indirectly in his interest:

(*a*) Name in full.
(*b*) Home address.
(*c*) Date of birth if under 19.
(*d*) With respect to each lot of work issued:
  (1) Date and hour on which work is given out to worker, and amount of such work given.
  (2) Date and hour on which work is returned by worker, and amount of such work returned.
  (3) Kind of articles worked on and operations performed.
  (4) Piece rates paid.
  (5) Hours worked on each lot of work returned.
  (6) Wages paid for each lot of work returned.
  (7) Deductions for Social Security taxes.
  (8) Date of payment.
(*e*) With respect to each week:
  (1) Hours worked each week.
  (2) Wages earned each week at regular piece rates.
  (3) Extra pay each week for overtime.
  (4) Total wages earned each week.
  (5) Deductions for Social Security taxes.

(*f*) Name and address of each agent, distributor, or contractor through whom home work is distributed.

In addition to the keeping of the above records, a separate handbook (to be obtained by the employer from the Wage and Hour Division and supplied by him to each worker) shall be kept for each industrial home worker, and the information required therein shall be entered by the employer or the person distributing home work on behalf of such employer each time work is given out to or received from an industrial home worker.

Except for the time necessary for the making of entries by the employer, the handbook must remain in the possession of the industrial home worker until such time as the Wage and Hour Division may request it.

A separate record and a separate handbook must be kept for each individual performing work in or about a home on any lot or amount of home work distributed.

For the purpose of this section, the term "industrial home worker" means any person producing in or about a home, for an employer, goods from material furnished directly by or indirectly for such employer.

This section shall be in force and effect until repealed or modified by the Administrator.

(This section, as amended, approved by the Administrator September 23, 1939, and published in the Federal Register September 26, 1939.)

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INTERPRETATIVE BULLETIN

NO. 4

MAXIMUM HOURS

AND OVERTIME COMPENSATION

November 1940[1]

UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

Office of the Administrator

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INTERPRETATIVE BULLETIN

NO. 4

MAXIMUM HOURS AND OVERTIME COMPENSATION

1. Section 7 of the Fair Labor Standards Act deals with maximum hours and overtime compensation. Section 7(a) limits the number of hours that an employer may employ any of his employees who are engaged in interstate commerce or in the production of goods for interstate commerce to 40 hours in any workweek—this limitation was 44 hours up to October 24, 1939, and 42 hours from that date to October 24, 1940—unless the employee receives compensation for his employment in excess of 40 hours at a rate "not less than one and one-half times the regular rate at which he is employed." It is clear that there is no absolute limitation upon the number of hours that an employee may work. If he is paid time and a half for overtime, he may work as many hours a week as he and his employer see fit.

2. Even as to the requirement of overtime payment there are exceptions provided for in Sections 7(b) and 7(c). See Interpretative Bulletin No. 8 on Collective Bargaining Agreements under Sections 7(b)(1) and 7(b)(2); Regulations, Part 526, Applicable to Industries of Seasonal Nature; Interpretative Bulletin No. 14 on the Exemption of Agriculture and the Exemptions for Processing Agricultural Commodities. See also the exemptions provided for in Section 13.

3. The 40-hour standard in Section 7(a) is a limitation upon the number of hours that may be worked in any workweek free of time and one-half overtime compensation. A workweek consists of seven consecutive days. It need not coincide with the calendar week but may begin on any day and at any time of any day. The beginning of the workweek may be changed if the change is intended to be permanent and not to evade the overtime requirements of the Act.

4. There is no general limitation on the number of hours that may be worked in any one workday, or on a Sunday, or on a holiday. Nor does the Act require that time and one-half overtime compensation be paid for work in excess of 8 hours or any other number of hours in a day or that time and a half be paid for work on a Sunday or on a holiday. If no more than 40 hours in the aggregate are actually worked in the workweek, overtime need not be paid. Nothing in the Act, however, will relieve an employer of any obligation he may have assumed by contract or of any obligation imposed by State or federal law to pay time and one-half or any other overtime rate for work in excess of 8 hours a day or for work on a Sunday or on a holiday.

5. The Act takes a single workweek as its standard and permits no averaging of hours over two or more weeks. Thus, where an employee works 30 hours one week and 50 hours the next, he must receive time and one-half overtime compensation for the 10 hours over 40 worked the second week, even though the average number of hours worked in the two weeks is 40. Time lost for any reason (such as holidays, sickness, vacations) during one workweek cannot be made up the next or any following workweek unless the employee receives time and one-half overtime compensation for hours in excess of 40 in the succeeding week.

6. Overtime must be compensated at a rate not less than one and one-half times the regular rate of pay at which the employee is actually employed. The regular rate of pay at which the employee is actually employed is not the minimum wage rate set in the Act, but is the employee's regular hourly rate of pay. The regular hourly rate of pay (except as to workers specially provided for in Section 14) may not be less than the statutory minimum of 30 cents an hour or less than the minimum wage rate fixed in an applicable wage order issued by the Administrator pursuant to Section 8. But if the regular hourly rate of pay exceeds the applicable minimum wage rate, time and a half must be paid on such higher rate.

7. The regularly hourly rate of pay is arrived at, in various cases, as follows:

(1) the piecework earning (including production bonuses, if any,) averaged over the hours worked each workweek, or

(2) the agreed hourly rate (average hourly rate for the workweek where there are production bonuses), or

(3) the weekly wage (including production bonuses, if any,) averaged over the regular number of hours worked per week, or

(4) the weekly wage (including production bonuses, if any,) averaged over the total hours worked each workweek where there is no regular number of hours.

A few examples may be helpful.

Pieceworkers

8. Where an employee is employed on a piecework basis, his regular hourly rate of pay is computed by dividing the total weekly piecework earnings (including production bonuses, if any) by the number of hours worked in the week. For his overtime work the pieceworker is entitled to be paid a sum, in addition to his weekly piecework earnings, equivalent to one-half the regular hourly rate of pay multiplied by the number of hours worked in excess of 40 in the week. Thus if the total piecework earnings in any workweek of 46 hours are $23, the regular hourly rate of pay is 50 cents. For the 6 hours of overtime, the employee is entitled to $1.50 (6 hours x 25¢) additional compensation; for the week's work he is entitled to a total of $24.50. In other words,

since the regular hourly rate of pay is 50 cents an hour, the employee is entitled to be paid an amount equal to 50 cents an hour for 40 hours and 75 cents an hour for the excess 6 hours or a total of $24.50.

Hourly Rate Employees

9. If the employee is employed on an hourly rate basis he must be paid for his overtime work a sum, in addition to his straight time earnings, equivalent to one-half the hourly rate multiplied by the number of hours worked in excess of 40 in the week. Thus a 50-cent hourly rate will bring for an employee who works 46 hours a total weekly wage of $24.50 ([46 hours x 50 cents] + [6 hours x 25 cents]). In other words, the employee is entitled to be paid an amount equal to 50 cents an hour for 40 hours and 75 cents an hour for 6 hours of overtime, or a total of $24.50. If, in addition to the earnings at the hourly rate, a production bonus of $4.60 is paid, the regular hourly rate of pay is 60 cents an hour. The employee is then entitled to be paid a total wage of $29.40 for 46 hours ([46 hours x 60 cents] + [6 hours x 30 cents]) or ([40 hours x 60 cents] + [6 hours x 90 cents]).

Salaried Employees—General

10. If the employee is on a weekly salary basis, his regular hourly rate of pay, on which time and a half must be paid, is computed by dividing the salary by the regular number of hours worked or if no regular number of hours is worked, by the total number of hours worked each week. If the employee works a regular number of hours, the regular hourly rate of pay will be a fixed rate, remaining unchanged from week to week. But if the employee works a fluctuating and not a regular number of hours, his regular hourly rate of pay will be the average hourly rate for the week and will vary from week to week. If the employee is on a monthly salary basis, the monthly salary is subject to translation into its equivalent weekly wage by multiplying by 12 (the

number of months) and dividing by 52 (the number of weeks). A semi-monthly salary will be translated into its equivalent weekly wage by multiplying by 24 and dividing by 52. Once the weekly wage is arrived at the regular hourly rate of pay will be calculated as indicated above.

Salaried Employees—Regular Number of Hours

11. Thus if an employee back in October 1938, received $23 for a 46 hour week, his regular hourly rate of pay was 50 cents. On October 24, 1938, he became entitled to $23.50 for that same 46 hour week ([46 hours x 50 cents] + [2 hours x 25 cents]) or ([44 hours x 50 cents] + [2 hours x 75 cents]). On October 24, 1939, he became entitled to $24 for the same 46 hour week ([46 hours x 50 cents] + [4 hours x 25 cents]) or ([42 hours x 50 cents] + [4 hours x 75 cents]). On October 24, 1940, he became entitled to $24.50 for the same 46 hour week ([46 hours x 50 cents] + [6 hours x 25 cents]) or ([40 hours & 50 cents] + [6 hours x 75 cents]).

Salaried Employees—Irregular or Fluctuating Number of Hours

12. If an employee earns $23 per week but works a fluctuating number of hours, his regular rate of pay will be the average hourly rate each week. Suppose that during the course of four weeks the employee works 40, 46, 50 and 41 hours. His regular hourly rate of pay each week is approximately 57.5 cents, 50 cents, 46 cents and 56.1 cents respectively. For the first week the employee is entitled to be paid $23; for the second week $24.50 ($23 + [6 hours x 25 cents]) or ([40 hours x 50 cents] + [6 hours x 75 cents]); for the third week $25.30 ($23 + [10 hours x 23 cents]) or ([40 hours x 46 cents] + [10 hours x 69 cents]); for the fourth week approximately $23.28 ($23 + [1 hour x 28 cents]) or ([40 hours x 56.1 cents] + [1 hour x 84 cents]).

Extra Compensation For Overtime Not Included in Determining Regular Rate of Pay

13. Extra compensation paid for overtime work need not be included in determining the employee's regular hourly rate of pay. Thus, if an employee earns $19.50 for a regular 39-hour workweek and time and a half or 75 cents is paid for all hours in excess of 39, the regular hourly rate of pay is still 50 cents an hour and, if the employee worked 46 hours one week he would be entitled to $24.75 ([39 hours x 50 cents] + [7 hours x 75 cents]) or ([46 hours x 50 cents] + [7 overtime hours x 25 cents]). The same principle applies to a piecework or hourly rate employee where time and a half is given for overtime work.

Employees Paid at Two Rates of Pay in Single Workweek

14. If an employee, during a single workweek, is paid at two different rates of pay, his regular rate of pay, on which time and one-half must be paid, is the average hourly rate for the week, computed by dividing the weekly earnings at both rates by the total number of hours worked in the week. For his overtime work the employee is entitled to a sum, in addition to such earnings, equivalent to one half the hourly rate of pay, arrived at as indicated, multiplied by the number of hours worked in excess of 40. Thus, suppose an employee works 30 hours a week at an occupation paying 40 cents an hour and 20 hours in the same week at an occupation paying 50 cents an hour. The employee's hourly rate of pay is 44 cents an hour—$22.00 [(30 hours x 40 cents) + (20 hours x 50 cents)] ÷ 50 hours) and he is entitled to be paid a total wage of $24.20 ([30 hours x 40 cents] + [20 hours x 50 cents] + [10 overtime hours x 22 cents]). In other words, the employee is entitled to be paid an amount equivalent to 44 cents an hour for 40 hours and 66 cents an hour for 10 hours. The regular hourly rate of pay will be computed in the same way where a pieceworker is employed at two different piece rates during the week or in any other

case where an employee works at two different rates during a week.

Effect of Reduction of Hours on Total Compensation

15. The question is often asked whether the Act requires an employer who cuts hours to 40 to increase the hourly rate of his employees so that they will earn the same total amount they earned when they worked the greater number of hours. Thus, suppose an employer prior to October 24, 1940 paid his employees 50 cents an hour for the 42-hour week customarily worked by his employees. On October 24, 1940, the employer reduced the hours to 40 and continued to pay at the 50-cent rate. This is not a violation of the statute. Congress intended to make it economically disadvantageous for an employer to work his employees excessive hours. If an employer eliminates the excessive hours, he is under no statutory obligation to increase his total wage bill by increasing the hourly rate. This opinion, however, is based solely upon an interpretation of the requirements of the Act. Whether in a particular case, a contract between the employer and his employees requires the employer to continue to pay the former weekly wage ($21 in the case supposed) in spite of the reduction of hours to 40, or requires the employer to continue to work his employees 42 hours, paying time and a half for 2 hours, is a question of general contract law about which it is not the function of the Division to express any opinion. Nothing in the Act itself, however, will relieve an employer of any obligation he may have assumed by contract. Whether the employer will, in the absence of a contract, maintain the former salary in spite of the reduction in hours is a matter which is left for determination to the interested parties.

Bookkeeping Manipulations of Rates of Pay. Violations of Section 7

16. Many questions have also been raised concerning the legality of various methods by which employers have resorted to adjustments or manipulations of the rates of pay to avoid the effect of the overtime require-

ments of the Act. These questions are discussed in an Opinion of the Office of the General Counsel, published October 19, 1939, which demonstrates the illegal nature of these methods.* This Opinion is printed in full in the next paragraph.

17. "On October 24 (1939)** the Fair Labor Standards Act will require that every employee subject to its provisions receive time and a half overtime compensation for all hours worked in excess of 42 hours in any workweek. Anticipating the 42-hour week, many employers have written to the Division setting forth a variety of methods by means of which they hope to work their employees the same number of hours presently worked (in excess of 42) without paying them any more than they are now paid. This opinion deals with the legality of these various plans to avoid the effect of the 42-hour week. The opinion is equally applicable, however, to any plans now being used to avoid the effect of the 44-hour week. (It also applies to any plans utilized subsequent to October 24, 1940 to avoid the effect of the 40-hour week.)**

18. "Section 7 of the Act requires that overtime must be paid at the rate of time and one-half the 'regular rate' of pay at which the employee is employed. Time and a half must, therefore, be paid upon the rate at which the employee is actually employed and paid and not upon a fictitious rate which the employer adopts solely for bookkeeping purposes. An examination of the methods suggested by employers as a means of continuing to work overtime hours without any increased wage bill will demonstrate the illegality of adopting a bookkeeping rate for purposes of the Wage and Hour Law and a different rate for any other purpose. Resorting to these methods will constitute a violation of Section 7 and will subject the employer to the penalties prescribed in the Act.

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*Press Release R-458

**Italics supplied in revision of November 1940.

"I. Salaried Employees

19. "It is clear that an employer will violate the Act if he simply pays no attention to its requirements next October 24 but continues to work his employees the same number of hours (in excess of 42) they now work for the same salary they now receive. In our opinion an employer who will continue to work his employees in excess of 42 hours after October 24 for the same salary they now receive but who takes the trouble to manipulate the rates of pay in order to adopt a rate upon which he may calculate the time and a half, without incurring any additional labor cost, stands in no better position than the employer who simply and frankly disregards the overtime requirements of the Act.

20. "Employers have proposed two principal methods of avoiding overtime payment to salaried employees. The employer, by one plan, will announce that henceforth the employee is employed either at the rate of 30 cents an hour or at an hourly rate in excess of the minimum. But each week the employer will pay the employee a 'bonus' to make up the fixed salary. Obviously, the employee will not actually be paid at the rate adopted by the employer for overtime calculation. His regular rate of pay for overtime purposes must be based on the total weekly earnings including the bonus.

21. "The employer eliminates the 'bonus' feature in the second method. If the employee works an irregular number of hours the employer proposes to adopt a different rate each week upon which to compute overtime. Each week the employee's earnings, on the basis of the adopted rate for 42 hours and time and a half such rate for the excess hours will equal or approximately equal the fixed salary. Thus, for example, if an employee, during the course of a month, works 43, 46, 52, and 48 hours respectively, the employer, to continue paying him $21 weekly, will adopt 48 cents, 44 cents, 37 cents and 41 cents as the respective rates of pay. Obviously, these rates are pure bookkeeping figures and the regular rate of pay on which overtime must be paid will be deter-

mined by dividing the $21 weekly salary by the hours worked each week.

22. "If the employee works a regular number of hours, the employer proposes to adopt a rate, which for 42 hours and at time and a half such rate for the hours in excess of 42, will yield the present earnings. The fact that the computations on the adopted rate will produce a figure equal to the employee's present total compensation cannot obscure the real situation. This employer will be in no better position than the employer who proposes to adopt the minimum wage as the overtime rate with a 'bonus' scheme, or to juggle the rates from week to week. This employer seeks to adopt one rate for overtime purposes, but will expressly or impliedly guarantee his employees another—based upon the weekly salary. The regular rate of pay on which overtime must be based will be determined by dividing the weekly salary by the regular number of hours worked.

"I. Hourly Rate Employees

23. "The employer will announce that he is 'reducing' the hourly rate of all his employees to 30 cents an hour for the first 42 hours and 45 cents for the hours in excess of 42. However, he will guarantee to each employee a weekly amount not less than the amount presently paid. Obviously, the adopted rate of 30 cents is a fictitious bookkeeping entry, which does not change the employees' regular rate of pay.

24. "The case is no different where the rate adopted will not be the minimum but will be a rate which, with time and a half for overtime, will yield approximately the same weekly earnings for the regular number of hours worked. Employees will not generally consent or acquiesce when the employer purports to reduce the rates unless they are assured they will not lose any pay but will continue to receive their present earnings. When the employees are given this assurance, expressly or impliedly, they are receiving an express or implied

guarantee of their present earnings and their true rate of pay remains unchanged. In the absence of an express or implied guarantee the question will be whether the employer has actually reduced the regular rate of pay. Will the employee be paid at the adopted rate or at his present rate when he does not work the full number of hours? If he is paid at his present rate, in such case, then the adopted rate is not his regular rate of pay but only a rate upon which the employer computes overtime on his books. It cannot, therefore, be the regular rate of pay upon which time and a half must be based.

"III. Pieceworkers

25. "An employee is now employed on a piece-rate basis. The employer will announce that henceforth the employee will be employed at an hourly rate of 30 cents an hour for 42 hours and 45 cents an hour for all hours in excess of 42, although the employee will continue to receive his full piece-work earnings at the present piece-rates. Obviously, 30 cents is not the regular rate of pay; it is not the rate at which the employee is actually paid. The case is no different if the employer adopts a rate in excess of the minimum. So long as the employer continues actually to pay at the piece rates now in effect, the regular rate of pay will be determined by dividing the piecework earnings by the hours worked each week, and the employee will be entitled to time and one-half that rate for hours worked in excess of 42.

"IV. Section 18*

26. "Much has been heard about Section 18 in connection with the plans just set out. But Section 18 does

* "'No provision of this act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.'"

not enter into the picture, except to reinforce the opinions just expressed as to what Congress intended by the words 'regular rate' of pay in Section 7. It may be helpful, however, to discuss briefly some of the situations to which Section 18 is meant to apply.

27. "By enacting Section 18, Congress primarily intended to discourage the possible tendency that the minimum wage fixed in the Act will become the maximum wage paid by employers. Thus, an employer who cuts the wages of his employees earning in excess of the minimum to avoid an increase in total labor cost due to the fact that he must raise the wages of many of his employees to 30 cents an hour will violate Section 18. Section 18 was also intended to expressly allay the fears of labor that employers who are bound by contract to maintain higher wage and hour standards than those fixed in the Act, would use the Act as an excuse not to perform their contracts. Where the employer is under contract, the employees have no need to rely upon Section 18. Nothing in the Act relieves an employer from any obligation he may have assumed by contract to maintain standards higher than those fixed in the Act. Section 18 removes every possible doubt on this score. The employees may proceed to enforce their contract rights.

Some Special Problems

The Maintenance of a Constant Wage from Pay Period to Pay Period Under the Fair Labor Standards Act

28. Two principal ways have been proposed by employers by which they might continue to pay their employees a constant wage or salary from pay period to pay period even though overtime is worked in some week or weeks. The first has been termed the "time off" plan and the second the "prepayment" plan.

29. Before explaining the operations of the "time off" and "prepayment" plan certain basic requirements

of the Act will be outlined which are material in determining the legality of any proposed plan. It must be remembered that the Fair Labor Standards Act takes a single workweek as its standard and permits no averaging of hours over two or more weeks. For the purposes of the Act each week stands alone. Time and a half overtime compensation must be paid the employee for all hours which he works in excess of 40 hours in a single workweek. The pay period need not, however, coincide with the workweek. Thus, there is no objection if the pay period is bi-weekly, semi-monthly or monthly. But the amount of compensation due the employee at each pay period must be computed on the basis of a single workweek. It must also be remembered that overtime compensation due an employee must be paid in cash and normally at the time of the regular pay period, that is, when the employee customarily receives his straight time compensation. It may not be accumulated to be paid at any time subsequent thereto.

The "Time Off" Plan

30. To comply with the Act and to continue to pay a fixed wage or salary each pay period even though the employee works overtime in some weeks or weeks within the pay period, the employer lays off the employee a sufficient number of hours during some other week or weeks of the pay period to offset the amount of overtime worked so that the desired wage or salary for the pay period covers the total amount of compensation, including overtime compensation, due the employee under the Act for each workweek taken separately. The employer does not pay for overtime work in time off, nor does he average hours over a period longer than a week. Control of earnings by control of the number of hours an employee is permitted to work, not payment for overtime in "time off" is the essential principle of the "time off" plan.

Let us trace the operation of the "time off" plan in specific cases.

Case I: Hourly Rate Employees

31. Let us assume that the employee earns 50 cents an hour and is paid bi-weekly. The employer wishes him to earn $40 for each pay period and therefore controls his hours in the following manner:

1st pay period		2nd pay period		3rd pay period	
1st week	2nd week	3rd week	4th week	5th week	6th week
44	34	37	42	37	44

32. For the first workweek the employee is entitled to $23 ([40 x 50¢] + [4 x 75¢]). So that the payment of $40 at the pay period will satisfy the requirements of the Act the employer permits the employee to work only 34 hours during the second week of the pay period. The employee thus becomes entitled to only $17 (34 x 50¢) during the second week and the payment of $40 ($23 + $17) at the pay period satisfies the requirements of the Act. It will be noted that in the second pay period fewer hours are worked during the first week and overtime is worked during the second week. The employer works the employee fewer hours during the first week because he anticipates that the employee will work overtime during the second week. The employee is thus entitled to only $18.50 for the third week (37 hours x 50¢) and to $21.50 for the fourth week ([40 x 50¢] + [2 x 75¢]) and the payment of $40 ($18.50 + $21.50) at the pay period satisfies the requirement of the Act. Where overtime is expected to be worked during the later week or weeks of the pay period, however, the employer is confronted with the problem of anticipating the amount of overtime that will be worked in such week or weeks in order to keep the hours down during the early week or weeks so that the payment of the desired amount—$40 in this case—at the pay period is sufficient to satisfy the requirements of the Act. Of course, if the employer miscalculates and the payment of $40 is insufficient to meet the requirements of the Act at the pay period, he will be required to make up the difference in cash. This is illustrated in the third pay period

when the employer expecting that the employee would work 42 hours during the sixth workweek, worked the employee only 37 hours during the fifth workweek. The estimate was incorrect and the employee worked 44 hours during the sixth workweek thus becoming entitled to $41.50 for that pay period. The employee must be paid the $41.50 at the pay period; the $1.50 may not be credited to the employee and carried over beyond the pay period to be paid the employee at some subsequent time when he is given time off without pay.

Case II: Salaried Employees

33. It will be noted that in the case of the hourly rate employees the payment of the desired, fixed amount —$40—at the pay period was sufficient to meet the requirements of the Act even though overtime was worked in one week of the pay period because there could be no doubt that in the shorter weeks when 34, 37 and 37 hours were worked the employee was entitled to only $17.00, $18.50 and $18.50, respectively. Thus the employee received $23.00, $21.50 and $23.00, the requisite amount of compensation, including overtime compensation, for the weeks in which he worked 44, 42 and 44 hours, respectively. It is important to bear this fact in mind in determining the applicability of the "time off" plan to salaried employees.

34. Let us take a concrete example of the application of the "time off" plan to a salaried employee who earns $40.00, paid bi-weekly and works a regular workweek of 40 hours.

1st Pay Period		2nd Pay Period		3rd Pay Period	
1st week	2nd week	3rd week	4th week	5th week	6th week
40 hours	40 hours	44 hours	34 hours	40 hours	40 hours

35. The regular rate of pay of such employee is 50 cents an hour ($20 [40 ÷ 2] ÷ 40 hours).

36. In the third workweek of the second pay period the employee works 44 hours and is entitled to $23 ([40

hours x 50¢] + [4 hours x 75¢]). In the fourth workweek the employee works 34 hours, or six hours less than the regular number, and is entitled to only $17 (34 hours x 50¢). At the end of the second pay period the employee is entitled to receive his fixed bi-weekly salary—$40 ($23 + $27).

37. The same result would follow if 34 hours were worked during the 3rd workweek and 44 hours during the fourth.

38. The payment of the fixed salary at the pay period in the above case is sufficient to meet the requirements of the Act only if it is assumed that the employer may properly deduct from the employee's bi-weekly salary when the employee works less than the regular number of hours in a particular week in the pay period and that, therefore, the employee is entitled to only $17 during the fourth workweek. The salaried employee thus described is very much like an hourly rate employee. An employer who is required by contract or agreement with the employee to continue to pay the fixed salary even though the employee has worked less than the regular number of hours in some week or weeks in the pay period and therefore to credit the employee with $20 for the fourth week even though only 34 hours were worked in that week, will not satisfy the requirements of the Act unless he pays the employee $43 ($23 for the third week and $20 for the fourth week) at the end of the second pay period. It cannot be maintained in such case that the payment of the fixed salary—$40—at the pay period included the requisite amount of overtime compensation due the employee for the week during which he worked overtime. The employee is entitled to receive and would have received the fixed salary even if he had not worked overtime during the third week but had nevertheless worked less than 40 hours during the fourth week. Extra compensation must be paid an employee who works overtime. The contract or agreement to pay the fixed salary even when less than 40 hours is worked one week within

the pay period may be expressed or implied. It may be implied from the fact that an employee is a salaried employee, who, when no question of overtime is involved, customarily receives his full fixed salary even though less than the regular number of hours is worked in some week within the pay period. Likewise if the employee's salary is not normally decreased when he is off on a holiday, vacation, sick leave or other miscellaneous periods of leave during one week, such time off may not be used to balance overtime worked another week within the pay period. In other words, the hours which the employer lays off the employee in one week of the pay period, to balance overtime worked in another week of the same pay period must be hours off for which the employee is not entitled to nor customarily receives compensation.

39. For this reason a "time off" plan cannot be applied to salaried employees working an irregular or fluctuating number of hours. It is the nature of such an employee's employment that he will continue to receive and he customarily does receive his fixed basic salary regardless of the number of hours he may work in a particular week or pay period. His salary is not docked when he happens to work fewer hours some week or pay period. The regular rate of pay at which such employee is actually employed and upon which time and a half consequently must be paid, is the average hourly rate for the week and varies from week to week. The employee is entitled for his overtime work each week to a sum, in addition to the basic salary, equal to one-half the regular rate of pay multiplied by the number of hours which he works in excess of 40 in the week. See Paragraph 12 of the Bulletin.

40. Some employers who have worked their salaried employees an irregular or fluctuating number of hours have attempted to change the nature of their employment to an hourly rate basis and then use a "time off" plan. Whether the "time off" plan becomes applicable will depend upon whether, after the attempted change,

the employees really are hourly rate employees or whether they continue to be salaried employees. Some criteria in making this determination may be suggested. Do the former salaried employees understand that they have become hourly rate employees and will be paid, as hourly rate employees normally are paid, only for the actual number of hours they work at the hourly rate? Are the employees actually paid at the hourly rate or is some salary arrangement superimposed upon the hourly rate? Furthermore, if the determination is made that the salaried employees have been converted into hourly rate employees, the Administrator in carrying out his duties of enforcement under the Act will sanction the procedure only if the hourly rate is representative of the rate at which the salaried employees may be said to have been employed while on a salary basis. An average hourly rate based upon the salaried employee's earnings and hours worked over a representative period of time (including both busy and slow seasons) will be considered to be representative of the rate at which the employees have been employed.

41. One further point needs to be brought out with respect to the application of the "time off" plan. The above examples of its operation take a bi-weekly pay period. The plan will also apply if the pay period is semi-monthly or monthly. But it will not apply to employees paid weekly because the overtime compensation due an employee may not be accumulated beyond the pay period but must be paid at the time of the regular pay period. Thus an employee who is paid his regular wages or salary weekly must also receive the overtime compensation due him weekly. The overtime compensation may not be accumulated to be paid him during subsequent weeks when he is given time off without pay. The "time off" plan is thus limited to employees who are paid bi-weekly, semi-monthly, or monthly. A "prepayment" plan, however, is not so limited and, as will be indicated below, may be applied to employees paid weekly.

The Semi-Monthly Pay Period

42. When the employee is paid semi-monthly, questions have been asked concerning the method of handling the "split workweek"—the workweek which begins before and extends beyond the date of the pay period.

43. Since it is impossible in such case to ascertain at the pay period whether any overtime will be worked during the "split workweek," the employer may pay the requisite additional compensation for the number of overtime hours worked during such workweek at the next succeeding period. At each pay period the employer will meet the requirements of the Act if he pays an amount in addition to the straight time wage or salary equal to one-half the regular rate of pay for the number of overtime hours worked in each of the completed workweeks in the period. In other words, overtime compensation earned in a particular workweek must be paid at the regular pay period in which such workweek ends. Payment for a workweek, however, may not be postponed beyond the pay period in which it ends.

44. The same principle governs the application of the "time off" plan to an employee who is paid semi-monthly. The employer may lay off the employee a sufficient number of hours during the other week or weeks which end in the pay period next succeeding the pay period which splits a workweek to offset the amount of overtime worked during the split workweek. In this way the payment of the desired wage or salary at the next succeeding pay period may cover the total amount of compensation, including overtime compensation, due the employee for each workweek, including the "split workweek," which ended in the period. The same principle applies where the pay period is monthly.

45. One further aspect of the operation of the plan needs to be clarified. The examples of the operation of the "time off" plan given herein revolve about 40 hours as the standard number of hours. The plan may, of course, revolve about a standard number of hours more

or less than 40. It may be helpful to give specific examples of the operation of the "time off" plan in such cases.

46. Suppose the employee earns a salary of $49, is paid bi-weekly and works a regular workweek of 46 hours. Let us assume that such employee prior to the Act earned $46 bi-weekly and worked a regular workweek of 46 hours. His regular rate of pay is 50 cents an hour ($23 [$46 ÷ 2] ÷ 46 hours). On October 24, 1938, he continued to work a regular workweek of 46 hours and was paid $47 therefor ([44 hours x 50¢) + (2 hours x 75¢)] x 2). After October 24, 1939, he continued to work a regular workweek of 46 hours and was paid $48 therefor ([(42 hours x 50 cents) + (4 hours x 75 cents)] x 2). Since October 24, 1940, he has continued to work a regular workweek of 46 hours and is paid $49 therefor ([(40 hours x 50 cents) + (6 hours x 75¢)] x 2).

47. During one week of the pay period the employee works 48 hours. To meet the requirements of the Act by the payment of the fixed salary, $49 at the pay period, the employer must work the employee only 44 hours, or two hours less than the regular number, the other week of the pay period—([(40 hours x 50 cents) + (8 hours x 75 cents)] = $26.00, the requisite payment for the overtime week) + [(40 hours x 50 cents) + (4 hours x 75 cents) = $23.00 requisite payment for the other week] = $49.00, the bi-weekly salary).

48. Suppose the employee earns a salary of $39.00, is paid bi-weekly and works a regular workweek of 39 hours. The regular rate of pay of such employee is 50 cents an hour ($19.50 [$39 ÷ 2] ÷ 39 hours).

49. During one week of the pay period the employee works 43 hours. If the employer customarily pays time and a half for all hours in excess of 39 he must work the employee only 33 hours, or 6 hours less than the regular number, the other week of the pay period in order to meet the requirements of the Act by the payment of

the fixed salary at the pay period. ([(39 hours x 50 cents) + (4 hours x 75 cents) — $22.50 requisite payment for the overtime week] + [(33 hours x 50 cents) — $16.50, requisite payment for the other week] — $39, the bi-weekly salary). If payment at straight time is customary for the hours in excess of 39 the employer must work the employee only 33½ hours, or 5½ hours less than the regular number, the other week of the pay period in order to meet the requirements of the Act by the payment of the fixed salary at the pay period. ([(40 hours x 50 cents) + (3 hours x 75 cents) = $22.25, requisite payment for the overtime week] + [(33½ hours x 50 cents) — $16.75, requisite payment for the other week] — $39, the bi-weekly salary).

50. It will be noted that in the cases outlined above, the number of hours for which the employee is laid off in one week to balance overtime worked in another week of the pay period must be hours off the regular number of hours worked or the number of hours' payment for which will yield the desired fixed wage or salary and not off the standard number of hours fixed in the Act.

The Formula That May Be Followed

51. Where the regular number of hours worked is 40, the formula which employers have used to comply with the Act by paying the fixed salary at the pay period is to lay off the employee one and one-half hours in one week for each hour worked in excess of 40 in the other. However, this formula does not work out where the regular number of hours is more or less than 40 hours. Thus, in the case given above where the regular number of hours worked is 46, it is clear that the fixed salary already includes payment at time and a half for 6 overtime hours. These 6 hours may, therefore, be used to balance on a one-to-one basis 6 hours worked in excess of 46, which also must be paid for at time and a half. Thus in the example given, 2 hours in excess of 46 were worked in one week of the pay period; these are

balanced by working the employee 2 hours less than 46 in the other week of the pay period. If the employee had worked 50 hours during one week, the fixed salary would be sufficient payment if 42 hours were worked the other week. But if 54 hours were worked one week, 6 of the hours in excess of the regular number could be offset by 6 hours off the regular number, 46, because they are all paid for at time and a half. The other 2 hours in excess of 46 however must also be paid for at time and a half and can be offset only by three additional straight time hours off 46 (one and one-half for one). Thus a total of 9 hours less than 46 or 37 hours must be worked in one week of the pay period when 54 hours are worked the other so that payment of the fixed salary at the pay period will satisfy the requirements of the Act. ([(40 hours x 50 cents) + (14 hours x 75 cents) — $30.50, requisite payment for the overtime work] + [(37 hours x 50 cents) — $18.50, requisite payment for the other week] — $49, the bi-weekly salary).

52. In the case given above where the regular number of hours is 39 and the employer customarily paid time and a half for all hours worked in excess of 39, one hour in excess of 39 in one week may be offset only by one and one-half hours off 39 in another week. If the employer customarily pays straight time for the hours in excess of 39, then one hour in excess of 39 in one week may be offset by 1 straight time hour off 39 in another week, but every additional hour (i.e., in excess of 40) may be offset only by one and one-half additional hours off 39 in the other week.

The "Prepayment" Plan

53. Though overtime compensation due an employee must normally be paid at the time of the employee's regular pay period, there is no objection if the employer pays overtime compensation to become due to an employee in advance. This is the basic principle of the "prepayment" plan. Thus some employers in an attempt to keep

the wage or salary constant from pay period to pay period, have resorted to paying their employees a sum in excess of what they e. rn or are entitled to in a particular week or weeks, wh. ch sum is considered to be a prepayment or advance payment of compensation for overtime to be subsequently worked. The operation of a prepayment plan may best be illustrated by specific examples.

A. Case I. Hourly Rate Employees

54. Let us take the example of an employee who is paid 50 cents an hour and works the following schedule:

Weeks	1	2	3	4	5	6	7	8
Hours Worked	35	36	44	40	42	38	46	36

55. The employer and the employee agree that in any week in which the employee works less than 40 hours, the employer will advance to the employee the difference between the amount equal to his regular rate of pay for 40 hours and the amount he would have received if he had been paid only for the number of hours he worked.

56. Thus in the first week the employee will be paid $20.00 although he was entitled to only $17.50. The employer wil' credit himself with $2.50. For the second week the employee will be paid $20.00 although he was entitled to only $18.00 and the employer will credit himself with $2.00. For the third week the employee will be paid $20.00 although he was entitled to $23.00 ([40 hours x 50 cents] + [4 hours x 75 cents]). In this way the employee will work off $3.00 of the amount previously credited to the employer. The employee will now carry a credit of $1.50. For the fourth week the employee will be paid $20.00, to which he was entitled. For the fifth week the employee will be paid $20.00 although he was entitled to $21.50, and will work off $1.50 more of the amount still credited to the employer. The employer will now carry no credit. For the sixth week the employee will be paid $20.00 and $1.00

will be credited to the employer. The employer will now carry a credit of $1.00. For the seventh week the employee will be paid $23.50 although he was entitled to $24.50 ([40 x 50 cents] + 6 x 75 cents]). The employee will thus have worked off the total credit accumulated by the employer and will be paid in cash the additional $3.50 due him. For the eighth week the employee will be paid $20.00 and the employer will credit himself with $2.00.

57. It will be noted that only credits to the employer will be carried over beyond the pay period; credits to the employee, i. e., overtime compensation due the employee, will not be carried over beyond the pay period to be consumed by subsequent employer "advances", but will be paid in cash at the pay period. In this way the employer will never be indebted to the employee.

58. It cannot be emphasized too strongly that the validity of the plan depends upon the assumption that when the employee receives $20.00 in the weeks when he works less than 40 hours, he is being paid in excess of what he earns or is entitled to and is therefore given a loan or advance which he may work out by subsequent overtime. Whether this is actually the fact is easily susceptible of determination in the case of hourly rate employees. But even in their case the question sometimes arises as to whether the "loan" or "advance" is really a loan or advance and not really a salary arrangement by which, for example, the employee in the above case is entitled to $20.00 for work already performed without subsequent overtime work. The determination of this question may depend upon what the parties understand will happen when an employee severs his relationship with the employer. If the employer still has some accumulated credits at that time, will some attempt be made to get back the amount of the "loan" or "advance" from the employee since there is no further possibility that it will be worked out by subsequent overtime?, The fact that no attempt will be made by the employer to collect the amount due him either by deducting such

amount from the employee's last check or by some other way, is some indication that the "loan" or "advance" is simply a fictitious bookkeeping device.

59. Similarly the fact that at the end of the year or at the end of some shorter period credits accumulated by the employer are simply wiped off the slate and a new start is made, is some indication that there is no "loan" or "advance" in fact but simply a bookkeeping device. If there is no "prepayment" in fact and the plan is nothing but a bookkeeping device, the Act will have been violated. No one criterion may be sufficient to determine this question but all the criteria set forth herein will be given weight in deciding this question.

Case II. Salaried Employees

60. Let us take the example of a salaried employee who earns $20.00 a week for a regular workweek of 40 hours and whose regular rate of pay is therefore 50 cents an hour. ($20 ÷ 40 hours).

Weeks	1	2	3	4	5	6	7	8
Hours	36	40	40	40	40	40	40	48

61. For the first week the employee will receive $20.00 although he earned and is entitled to only $18.00 (36 hours x 50 cents). The employer will credit himself with $2.00 as a prepayment of compensation for overtime to be subsequently worked. The employee will receive $20.00 during each of the next six weeks. For the eighth week the employee is entitled to $26.00 ([40 hours x 50 cents] + [8 hours x 75 cents]). He will thus have worked off the entire credit of $2.00 accumulated by the employer and will receive $24.00 in cash.

62. The validity of the plan as outlined depends upon the assumption that the employee is overpaid when he received $20.00 for the first week of 36 hours and that therefore the employer has loaned or advanced him $2.00. In addition to the criteria set forth under case I to determine whether the "loan" or "advance" is real or only a bookkeeping device an additional consideration

comes into play with respect to the salaried employee who works a regular number of hours. If the employee, who contemplates adopting a "prepayment" plan is presently required by contract or agreement with the employee, express or implied, to pay him the fixed wage or salary even when the employee works less than the regular number of hours in some week or weeks, it cannot be said that the employee is paid in excess of what he earns or is entitled to when he receives the fixed wage or salary in such weeks. He has received no "loan" or "advance" and no amount therefore may be credited to the employer as a prepayment of compensation for overtime to be subsequently worked.

63. For the same reason a prepayment plan cannot be applied to a salaried employee who works a fluctuating number of hours. Since the nature of such an employee's employment is that he will receive the fixed basic salary regardless of the number of hours worked it cannot be said that such an employee is paid in excess of what he earns or is entitled to in any week in which he receives the fixed salary even though such weeks may have been short weeks.

64. We have considered above the question of the conversion of a salaried employee working a fluctuating number of hours into an hourly rate employee.

65. The amounts paid to an employee while absent from work on a vacation, holiday, sick leave or other miscellaneous periods of leave, may not be considered by the employer as prepaid overtime compensation just as the time off during such periods may not be used to balance overtime worked within the pay period. Payment during holidays, vacations, etc., is not payment for overtime and may not be considered by the employer as compensation for the employee's overtime work under the Act.

66. In two respects a prepayment plan, if it may be properly applied to salaried employees, is not subject to the same restrictions as a "time off" plan. It is not

confined, in its operation, to the pay period. Credits to the employer, i.e., amounts paid by him in excess of the amounts earned by the employee or to which the employee is entitled, may be carried over beyond the pay period until they are consumed by the overtime work of the employee. Secondly, a prepayment plan may be applied to employees who are paid weekly.

67. It need not be restricted in its application, as is the "time off" plan, to employees paid on a bi-weekly, semi-monthly, or monthly basis. Under a prepayment plan the employee is being paid the overtime compensation due him, either in advance or, at the latest, at the time of the regular pay period.

68. Where applicable, a "time off" and "prepayment" plan may be applied in conjunction with each other.

The Application of Section 7 in Cases Where a Union Agreement or Other Agreement Between an Employer and His Employees Calls For the Payment of Overtime or Other Special Compensation Not Required by the Act.

69. The question has been asked as to what are the requirements of Section 7 in cases where a union agreement or other agreement between an employer and his employees calls for the payment of overtime or other special compensation which is not required to be paid by the Act. Extra compensation paid for overtime work, even if required to be paid by a union agreement or other agreement between the employer and his employees need not be included in determining the employee's regular hourly rate of pay (see paragraph 13 of the bulletin). Furthermore, in determining whether he has met the overtime requirements of Section 7 the employer may properly consider as overtime compensation paid by him for the purpose of satisfying these requirements, only the extra amount of compensation—over and above straight time—paid by him as compensation for overtime work—that is, for hours worked outside the normal or

regular working hours—regardless of whether he is required to pay such compensation by a union or other agreement. In no week, of course, will the overtime requirements of section 7 be met unless the employee receives an amount equal to at least his regular rate of pay for 40 hours and time and one-half such rate for the hours worked in excess of 40. It should be noted however, that the Act does not supersede provisions of a collective bargaining agreement or other agreement between an employer and his employees which set standards higher than those set in the act; which, for example, require the employer to pay time and a half for all hours worked in excess of 8 hours a day regardless of how many hours in the aggregate the employee may work in a week. Nothing in the act, therefore, relieves an employer from any obligation he may have assumed by contract (see Interpretative Bulletin No. 8 especially paragraphs 4 through 9 thereof). It should be pointed out, however, that the questions as to what are the obligations of the employer under the agreement is a question of general contract law about which it is not the function of the division to express any opinion.

70. It may be helpful to give some specific examples raising the question under discussion.

One preliminary case may be put.

(1) An Agreement of Employment Calls for the Payment of Time and One-Half for all Hours Worked in Excess of 40, the Regular Weekly Number of Hours Fixed in the Agreement.

Clearly payment in accordance with the requirements of the agreement will satisfy the requirements of Section 7. The agreement already contains the time and one-half penalty. The act does not require the employer to pay time and one-half upon time and one-half. It merely imposes upon the agreement the sanction of law and a violation of the agreement becomes a violation of the act, subject to all the penalties prescribed in the act.

(2) An Agreement of Employment Calls for the Payment of Time and One-third for all Hours Worked in Excess of 39, the Regular Weekly Number of Hours fixed in the Agreement.

A. Suppose an employee is paid $1 an hour and works 41 hours in one week.

In accordance with the requirements of the union agreement the employee is entitled to be paid $41.66 ([39 x $1] + [2 x $1.33]). It has been argued that the employer, in order to meet the requirements of section 7 and the obligations of his contract, must pay the employee at least $41.83 ([39 x $1) + [1 x $1.33] + [1 x $1.50]). In our opinion, however, since the extra 33 cents for the 1 hour in excess of 39 up to 40 is paid by the employer to the employee as overtime compensation, the employer may properly consider and credit himself with such amount as overtime compensation paid to meet the requirements of section 7. When the extra 33 cents is so credited the amount paid the employee—$41.66 is in excess of an amount equal to the employee's regular rate of pay for 40 hours and time and one-half such rate for the extra 1 hour and the employer has satisfied the requirements of section 7.

B. Suppose an employee is paid $1 an hour and works 54 hours.

The employee is required to be paid $58.95 by the union agreement ([39 x $1] + [15 x $1.33]). Since the extra 33 cents for the 1 hour in excess of 39 up to 40 is paid by the employer to the employee as overtime compensation, the employer may properly consider and credit himself with such amount as overtime compensation paid to meet the requirements of section 7. However, even if such amount is credited to the employee, the payment of $58.95 will not satisfy the requirements of the act because it is less than an amount equal to the employee's regular rate of pay for 40 hours and time and one-half

such rate for the extra 14 hours or $61.00 ([40 x $1] + [14 x $1.50]). Thus the employer must pay an additional $2.05 ($61—$58.95) or a total of $61.00 in order to meet the requirements of section 7.

(3) An Agreement of Employment Calls for the Payment of Time and One-Half for all Hours Worked in Excess of 8 hours, the Normal or Regular Workday.

Suppose an employee paid $1 an hour works the following schedule:

	M	T	W	T	F	S	S
Hours	10	10	10	10	8	0	0
Pay Under Union agreement	$11	11	11	11	8	0	0

In our opinion the payment of $52.00 to which the employee is entitled under the union agreement, will satisfy the requirements of section 7. Since the extra $4.00 for the daily overtime is paid by the employer to the employee as overtime compensation the employer may properly consider and credit himself with such amount as overtime compensation paid to meet the requirements of section 7. When the extra $4.00 is so credited, the amount paid the employee—$52.00—is an amount equal to the employee's regular rate of pay for 40 hours and time and one-half such rate for the extra 8 hours, and the employer has satisfied the requirements of section 7. We reject the contention that the employer must pay $56.00 to satisfy the requirements of the act. ([48 x $1] + [8 daily overtime hours x 50¢] + [8 weekly overtime hours x 50 cents]). To do so would impose a double penalty upon the employer by requiring him to pay time and one-half for hours already paid for at time and one-half.

(4) Suppose an employee was paid $4.04 a day prior to the effective date of the act for a normal workday of 8 hours. His workweek consisted normally of 6 workdays. Thus he earned $24.24 a week for a work-

week of 48 hours. The parties agree that henceforth the employee's rate of pay will be 46.5 cents an hour for the first 6 2/3 hours of the day and 70 cents (one and one-half times 46.5 cents) for the remaining 1 1/3 hours. The employee will continue to receive $4.04 a day or $24.24 for a 48 hour workweek. The employer maintains that the employee's regular rate of pay for the purposes of the act is 46.5 cents an hour and that therefore under the interpretation set forth in the foregoing paragraph, the requirements of Section 7 of the act are met because $24.24 is an amount equal to 46.5 cents an hour for 40 hours and 70 cents an hour for the extra 8 hours. In our opinion the employer's contention is without merit. The division of a normal 8 hour workday into 6 2/3 straight time hours and 1 1/3 "overtime" hours is purely fictitious. The employee is not paid at the rate of 46.5 cents an hour and the alleged overtime rate of 70 cents is not paid for overtime work. The interpretation set forth in the foregoing paragraph does not apply because in fact no extra compensation is paid as no hours are worked outside the normal or regular daily working hours. The employee will continue to receive $4.04 a day for a normal 8 hour day. His regular rate of pay is not 46.5 cents—which is a fictitious bookkeeping rate adopted solely as the basis upon which to compute overtime in order to evade the requirements of section 7 of the act—but 50.5 cents an hour. See paragraphs 16 through 27 of the bulletin. For a workweek of 48 hours the employee should receive $26.28 ([40 x 50.5¢] + [8 x 76¢]).

(5) An agreement of Employment Calls for the Payment of Straight Time up to 48 hours and Double Time Thereafter.

Suppose an employee paid $1 an hour works the following schedule:

	M	T	W	T	F	S	S
Hours	8	8	8	8	8	8	8
Pay Under Union agreement	$8	8	8	8	8	8	16

In our opinion the payment of $64.00 to which the employee is entitled under the union agreement will satisfy the requirements of section 7. Since the extra $8.00 for the 8 hours in excess of 48 is paid by the employer to the employee as overtime compensation the employer may properly consider and credit himself with such amount as overtime compensation paid to meet the requirements of section 7. When the extra $8.00 is so credited the amount paid the employee—$64.00 is an amount equal to the employee's regular rate of pay for 40 hours and time and one-half such rate for the extra 16 hours and the employer has satisfied the requirements of section 7. Of course should the employee work only 48 hours one week he must be paid $52.00 ([40 x $1] + [8 x $1.50]) for that week in spite of the provision in the union agreement that he is to receive the overtime rate only after 48 hours are worked in a week.

(6) An Agreement of Employment Calls for the Payment of Time and One-Half for all Hours Worked on a Holiday or on Sunday.

A. Suppose an employee paid $1 an hour works th following schedule: Tuesday is a holiday.

	M	T	W	T	F	S	S
Hours	8	8	8	8	8	8	0
Pay Under Union agreement	$8	12	8	8	8	8	0

In our opinion the payment of $52.00 to which the employee is entitled under the union agreement will satisfy the requirements of section 7. We reject the contention that the employer must pay $56.00 to satisfy the requirements of the act ([48 x $1] + [8 holiday overtime hours x 50 cents] + [8 weekly overtime hours x 50 cents]). To do so would impose a double penalty upon the employer by requiring him to pay time and one-half for hours already paid for at time and one-half.

B. Suppose an employee paid $1 an hour works the following schedule:

	M	T	W	T	F	S	S
Hours	0	8	8	8	8	8	8
Pay Under Union agreement	$0	8	8	8	8	8	12

This case is no different from the preceding case, and in accordance with our opinion, the payment of $52.00 to which the employee is entitled under the union agreement will satisfy the requirements of section 7.

It has been urged upon us that a time and one-half rate for work on Sunday and holidays is not an overtime rate at all but is merely a straight time rate for such days. The "straight time" rate is higher because work on Sundays and holidays is more onerous than work on ordinary workdays. If this suggestion were adopted the employee must be considered as being employed at two different rates during the week and his regular rate of pay and the overtime compensation due him would be computed in accordance with the interpretation set forth in paragraph 14 of the bulletin. However, it is our opinion that generally work on Sundays and holidays may properly be considered as overtime work and the interpretation set forth herein may be considered applicable.

(7) An Agreement of Employment Provides That an Employee Shall be Paid for Holidays, Even Though he does not Work on Such Days.

Suppose an employee paid $1 an hour works the following schedule: Tuesday is the holiday.

	M	T	W	T	F	S	S
Hours	8	0	8	8	8	8	8
Pay Under Union agreement	$8	8	8	8	8	8	8

The employee is entitled to $56.00 under the union agreement. However, it is our opinion that only the payment of $60.00 will satisfy the requirements of section 7 ([40 x $1] + [8 x $1.50] + [$8 for Tuesday] = $60.00). The employer may not credit himself with the $8.00 paid for the holiday as overtime compensation paid to meet the requirements of section 7. The amount paid by the employer to the employee for a holiday which is not worked is not paid as compensation for overtime work, but for some other reason.

The same result for the same reason follows where an employer pays an employee during periods of illness, vacation, or other miscellaneous periods of leave. The amounts so paid by the employer may not, therefore, be credited by him as overtime compensation paid to meet the requirements of Section 7.

Such periods of compensated leave are not given as compensation for overtime work but for a variety of reasons—to reward employees for faithfulness, loyalty, and length of service, to bolster personnel morale, to safeguard the physical health and well-being of employees by giving them needed rest and relaxation, and to conform to progressive business practice, etc. The very term "vacation with pay" for example, negates any idea that such payment was made as overtime compensation.

The fact, however, that $8.00 is paid for the holiday, in the above example, does not raise the employee's regular rate of pay which remains $1.00.

(8) An Agreement of Employment Sets a Daily Wage Rate Based Upon an 8 Hour Day and Guarantees the Employee that if he Works 4 or More Hours a Day he will be Given a Full Day's Pay.

Suppose an employee paid $1 an hour works the following schedule:

	M	T	W	T	F	S	S
Hours	8	4	8	8	8	8	0
Pay Under Union agreement	$8	8	8	8	8	8	0

In our opinion only the payment of $50.00 will satisfy the requirement of Section 7. ([40 x $1] + [4 x $1.50] + [$4.00 extra for the 4 hours worked on Tuesday] = $50.00). The employer may not credit himself with the extra $4.00 paid on Tuesday as compensation paid to meet the requirements of section 7 because such amount was not paid for overtime work. The fact, however, that $8.00 is paid for 4 hours work on Tuesday does not raise the employee's regular rate of pay, which remains $1.00.

The same result follows where a union agreement provides that if an employee is asked to report for duty on any day and does so he must be given at least a half day's pay even if he does not work a half day. The amounts that may be paid under such an agreement over and above what the employee would receive if paid only for the number of hours worked are not paid for overtime work but to compensate the employee for the consumption of his time and to discourage employers from calling their men in to work for only a fraction of a day when they might get full time elsewhere.

(9) An Agreement of Employment Provides that Men Doing Special Work Shall Receive 6 Hours' Pay for Such Work, Regardless of the Time Actually Consumed in Performance.

A. Suppose an employee paid $1 an hour works the following schedule. Three hours on Tuesday were worked on the special work.

	M	T	W	T	F	S	S
Hours	8	3	8	8	8	4	0
Pay Under Union agreement	$8	11	8	8	8	4	0

In our opinion the employer may not credit himself with the extra $3.00 paid for the special work on Tuesday as compensation paid to meet the requirements of section 7 because such amount was not paid for overtime work but for special work. The employee, in fact, is paid a different higher rate for special kind of work and is thus paid at two different rates during a single workweek. Paragraph 14 applies; the employee's regular rate of pay is approximately $1.07 ($47.00, the employee's straight time pay, ÷ 44 hours). To satisfy the requirements of Section 7, the employer must pay $49.14 ([$47.00 for 44 hours at straight time] + [4 overtime hours x 53½ cents, one-half the regular rate of pay]).

71. The same principles expressed in the foregoing opinions would, likewise, apply where a state or federal law calls for the payment of overtime or other special compensation which is not required by the Fair Labor Standards Act. They would also apply where an employer customarily pays overtime or other special compensation which is not required by the act.

72. The Overtime Requirements of Section 7(b): A similar problem is raised by section 7(b) which provides that employees subject to the partial exemption from the overtime provisions of section 7(a) provided

by sections 7(b)(1), 7(b)(2), or 7(b)(3) must receive time and one-half overtime compensation "for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be . . .". The question is asked as to what are the requirements of section 7(b) in this respect when the employee works both in excess of 12 hours in a day and in excess of 56 hours in the aggregate in any workweek. It is our opinion that the employer must pay either daily or weekly overtime, whichever is greater, but not both. It may be helpful to illustrate this opinion by specific examples.

A. Suppose an employee paid $1 an hour works the following schedule.

	M	T	W	T	F	S	S
Hours	14	14	14	14	10	0	0

On a daily basis the employee is entitled to 8 hours of overtime pay or a total of $70.00 for the week ([(12 x $1) + (2 x $1.50) x 4] + [10 x $1] − $70.00). On a weekly basis the employee is entitled to 10 hours of overtime pay or a total of $71.00 for the week ([56 x $1] + [10 x $1.50] − $71.00). In our opinion the employer must pay $71.00 to satisfy the requirements of the act.

B. Suppose the employee paid $1 an hour works the following schedule.

	M	T	W	T	F	S	S
Hours	16	14	14	14	6	0	0

On a daily basis the employee is entitled to 10 hours of overtime pay or a total of $69.00 for the week. On a weekly basis the employee is entitled to 8 hours of overtime pay or a total of $67.00 for the week ([56 x $1] + [8 x $1.50] − $67.00). In our opinion the employer must pay $69.00 to satisfy the requirements of the act.

73. Supper Money. The question has often been

asked as to whether amounts paid by an employer, commonly known as "supper money" may be credited to the employer in determining whether he has satisfied the overtime requirements of section 7. It is our opinion that generally amounts paid as "supper money" are not paid as overtime compensation but are paid to recompense the employee for expenses incurred while working later than usual. Normally the amounts so paid do not depend upon the number of overtime hours worked but approximate the price of a "supper". Furthermore, in the usual case, employers do not pay social security taxes on the amounts paid as "supper money", thus indicating that they do not consider such amounts to constitute "wages" paid the employee. Obviously, if such amounts are not considered to be "wages" they may not be considered as overtime compensation for the purpose of section 7. For these reasons the employer, in the usual case may not take credit for "supper money" in determining whether he has satisfied the requirements of section 7.

PLAINTIFF'S EXHIBIT No. 25.

O. L. Bagwell — Bldg Maintenance (Night Watchman) Weekly

Week Ending	Total Hours Worked	Rate of Pay	Pay at Regular Rate Statutory Hours	Pay at Regular Rate Overtime Hours	Total Due	Total Paid	Balance Due
10-31-38	50	26.75 ÷ 48 = 55.73 or 56	44×56 = 24.64	6×84 = 5.04	29.68	26.75	2.93
11-14-38	48	26.75 ÷ 48 = 55.73 or 56	44×56 = 24.64	4×84 = 3.36	28.00	26.75	1.25
12-26-38	"	" "	" "	" 3.36	"	"	1.25
1- 9-39	"	" "	" "	" "	"	"	1.25
2-27-39	"	" "	" "	" "	"	"	1.25
3- 6-39	"	32.00 ÷ 48 = 66.66 or 67	44×67 = 29.48	4×1.00 = 4.00	33.48	32.00	1.48
4-17-39	"	32.00 ÷ 48 = 66.66 or 67	44×67 = 29.48	4×1.00 = 4.00	33.48	32.00	1.48
5-29-39	"	" "	" "	" "	"	"	1.48
6-12-39	"	" "	" "	" "	"	"	1.48
7-31-39	36	— —	— —	— —	—	—	—
8-28-39	48	32.00 ÷ 48 = 66.66 or 67	44×67 = 29.48	4×1.00 = 4.00	33.48	32.00	1.48
9-11-39	"	" "	" "				1.48
10-23-39	"	" "	" "				1.48
11- 6-39	"	" "	42×67 = 28.14	6×1.00 = 6.00	34.14	32.00	2.14
12-11-39	"	" "	" "	" "	"	"	2.14

1-15-40	"	"	"	"	"	"	"	"	"	"	2.14	
2-26-40	"	"	"	"	"	"	"	"	"	"	2.14	
3-11-40	"	"	"	"	"	"	"	"	"	"	2.14	
4-29-40	"	"	"	"	"	"	"	"	"	"	2.14	
5- 6-40	"	"	"	"	"	"	"	"	"	"	2.14	
6- 3-40	"	"	"	"	"	"	"	"	"	"	2.14	
7- 1-40	"	"	"	"	"	"	"	"	"	"	2.14	
8- 5-40	"	"	"	"	"	"	"	"	"	"	2.14	
9- 2-40	12	—	—	—	—	—	—	—	—	—	—	
10- 7-40	48		67	42×67 =	28.14	6×1.00 =	6.00	34.14				
10-21-40	"		67	42×67 =	28.14	6×1.00 =	6.00					
10-28-40	"		67	42×67 =	28.14	6×1.00 =	6.00					
11- 4-40	"		67	40×67 =	26.80	8×1.00 =	8.00					
11-11-40	"		"	"	"	"	"			"		
12- 2-40	"		"	"	"	"	"			"		

PLAINTIFF'S EXHIBIT No. 25—Continued.

William Snodgrass

Week Ending	Total Hours Worked	Rate of Pay	Pay at Regular Rate Statutory Hours		Pay at Regular Rate Overtime Hours		Total Due	Total Paid	Balance Due
10-31-38	47	20.00 ÷ 46 = .434 or 43	44×43 =	18.92	3×64½ =	1.94	20.86	20.00	.86
11-14	46	20.00 ÷ 46 = .434 or 43	44×43 =	18.92	2×64½ =	1.29	20.21	20.00	.21
12-26	"	" "	"	"	"	"	"	"	.21
1- 9-39	"	" "	"	"	"	"	"	"	.21
2-27	"	" "	"	"	"	"	"	"	.21
3- 6	"	" "	"	"	"	"	"	"	.21
4-17	"	" "	"	"	"	"	"	"	.21
5-29	"	" "	"	"	"	"	"	"	.21
6-12	"	" "	"	"	"	"	"	"	.21
7-31	"	" "	"	"	"	"	"	"	.21
8-28	"	" "	"	"	"	"	"	"	.21
9-11	"	" "	"	"	"	"	"	"	.21
10-23	"	" "	"	"	"	"	"	"	.21
11- 6	"	" "	42×43 =	18.06	4×64½ =	2.58	20.64	20.00	.64
12-11	"	" "	"	"	"	"	"	"	.64

1-15-40	"	"	"	"	"	"	"	"	"	"	.64	
2-26	"	"	"	"	"	"	"	"	"	"	.64	
3-11	"	"	"	"	"	"	"	"	"	"	.64	
4-29	"	"	"	"	"	"	"	"	"	"	.64	
5- 6	"	"	"	"	"	"	"	"	"	"	.64	
6- 3	"	"	"	"	"	"	"	"	"	"	.64	
7- 1	"	"	"	"	"	"	"	"	"	"	.64	
8- 5	"	"	"	"	"	"	"	"	"	"	.64	
9- 2	"	"	"	"	"	"	"	"	"	"	.64	
10- 7	"	"	"	"	"	"	"	"	"	"	.64	
10-21	"	"	"	"	"	"	"	"	"	"	.64	
10-28	"	"	"	"	"	"	"	"	"	"	.64	
11- 4	"	"	"	40×43 =	17.20	6×64½ =	3.87	21.07	"		1.07	
11-11	"	"	"								1.07	
12- 2	"	"	"								1.07	
									Total due		15.55	

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PLAINTIFF'S EXHIBIT No. 25—Continued.

Charles Prasifka — Mechanical Dept.—

Week Ending	Total Hours Worked	Rate of Pay	Pay at Regular Rate Statutory Hours	Pay at Regular Rate Overtime Hours	Total Due	Total Paid	Balance Due	
11/6/38	48	34.00 ÷ 48 = .708 or 71c.	44 × .71 = 31.24	4 × 1.06¼ = 4.26	35.50	34.00	1.50	
11-20	48	34.00 ÷ 48 = .708 or 71c	44 × .71 = 31.24	4 × 1.06¼ = 4.26	35.50	34.00	1.50	
11-29	44	— —	— —	— —	—	—		
12- 4	48	34.00 ÷ 48 = .708 or 71c	44 × 71 = 31.24	4 × 1.06¼ = 4.26	35.50	34.00	1.50	
1- 8-39	44½	34.00 ÷ 44½ = .764 or 76	44 × 76 = 33.44	½ × 1.14 = .57	34.01	34.00	.01	
1-15	48	34.00 ÷ 48 = .708 or 71c	44 × 71 = 31.24	4 × 1.06¼ = 4.26	35.50	34.00	1.50	
2-19	48½	34.00 ÷ 48½ = 70	44 × 70 = 30.80	4½ × 1.05 = 4.73	35.53	34.00	1.53	
2-26	48½	34.00 ÷ 48½ = 70	44 × 70 = 30.80	4½ × 1.05 = 4.73	35.53		1.53	
3- 5	48½	34.00 ÷ 48½ = 70	44 × 70 = 30.80	4½ × 1.05 = 4.73	35.53	34.00	1.53	
3-26	49	34.00 ÷ 49 = 69	44 × 69 = 30.36	5 × 1.03½ = 5.18	35.54	34.00	1.54	
4- 2	46	34.00 ÷ 46 = 74(.739)	44 × 74 = 32.56	2 × 1.11 = 2.22	34.78	34.00	.78	
4-16	50	34.00 ÷ 50 = 68	44 × 68 = 29.92	6 × 1.02 = 6.12	36.04	34.00	2.04	
4-23	49½	34.00 ÷ 49½ = .683 or 68	44 × 68 = 29.92	5½ × 102 = 586½ - 5.87	35.79	"	1.79	
6-11	48½	34.00 ÷ 48½ = 697 or 70	44 × 70 = 30.80	4½ × 105 = 4.99	35.79	"	1.79	
8- 6	50½	34.00 ÷ 50½ = 67	44 × 67 = 29.48	6½ × 100½ = 6.78	36.26	"	2.26	

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10-15	45	34 ÷ 45 =	.75½	44×75½ =	33.22	1×113½ =	1.13	34.35	"	.35
10-29	48	34 ÷ 48 = .708 or	.71	44×71 =	31.24	4×106½ =	4.26	35.50	"	1.50
11-26	44	34.00 ÷ 44 =	.77	42×77 =	32.34	2×115½ =	2.31	34.65	"	.65
12- 3	48	34.00 ÷ 48 = .708 or	.71	42×71 =	29.82	6×106½ =	6.39	36.21	"	2.21
12-10	49½	34.00 ÷ 49½ =	.69	42×69 =	28.98	7½×103½ =	7.50	36.48	"	2.48
12-24	48	34.00 ÷ 48 =	.71	42×71 =	29.82	6×106½ =	6.39	36.21	"	2.21
1- 7-40	48	34.00 ÷ 48 =	.71	42×71 =	29.82	6×106½ =	6.39	36.21	"	2.21
1-14	48½	34.00 ÷ 48½ =	.70	42×70 =	29.40	6½×105 =	6.82½	36.23	"	2.23
4-14	48	34.00 ÷ 48 = .708 or	.71	42×71 =	29.82	6×106½ =	6.39	36.21	"	2.21
7- 2		—		—	—	—	—	—	—	—
7-28	50	34.00 ÷ 50 =	.68	42×68 =	28.56	8×1.02 =	8.16	36.72	"	2.72
8- 4	50	34.00 ÷ 50 =	.68	42×68 =	28.56	8×1.02 =	8.16	36.72	"	2.72
8-11	50	34.00 ÷ 50 =	.68	42×68 =	28.56	8×1.02 =	8.16	36.72	"	2.72
8-25	48	34.00 ÷ 48 = .708 or	.71	42×71 =	29.82	6×1.06½ =	6.39	36.21	"	2.21
9- 1	48	34.00 ÷ 48 = .708 or	.71	42×71 =	29.82	6×1.06½ =	6.39	36.21	"	2.21

PLAINTIFF'S EXHIBIT No. 25—Continued.

Olen Brown — Control Operator

Week Ending	Total Hours Worked	Rate of Pay	Pay at Regular Rate Statutory Hours	Pay at Regular Rate Overtime Hours	Total Due	Total Paid	Balance Due	
10-31-38	46½	45.00 ÷ 46½ = .963 or .96	44 × 96 = 42.24	2½ × 1.44 = 3.96	46.20	45.00	1.20	
11- 7	34½	— —	— —	— —	—	—	—	
12-12	51½	45.00 ÷ 51½ = .869 or .87	44 × 87 = 38.28	7½ × 130½ = 10.11	48.39	45.00	3.39	
1- 9-39	39	— —	— —	— —	—	—		
2- 6	55(55) (60)	45.00 ÷ 56 = .804 or .80	44 80 = 35.20	12 × 1.20 = 14.40	49.60	45.00	4.60	
3-13	30½	— —	— —	— —	—	45.00	—	••
4-24	66	45.00 ÷ 66 = .682 or .68	44 × 68 = 29.92	22 × 1.02 = 22.44	52.36	57.94	—	5.58
6-12	48½	45.00 ÷ 48½ = .928 or .93	44 × 93 = 40.92	4½ × 1.39½ = 6.28	47.20	45.00	2.20	
8-21	44½	45.00 ÷ 44½ = 1.0054 or 1.01	44 × 1.01 = 44.44	½ × 1.51½ = 1.14	45.58	45.00	.58	••
10- 2	62½	45.00 ÷ 62½ = .717 or .72	44 × 72 = 31.68	18½ × 1.08 = 20.25	51.93	54.28		2.35
11- 6	50	45.00 ÷ 50 = .90	42 × 90 = 37.80	8 × 1.35 = 10.80	48.60	45.00		
1- 8-40	46	45.00 ÷ .978 or .98	42 × 98 = 41.16	4 × 1.47 = 5.88	47.04	45.00		
3-25	44	45.00 ÷ 44 = 1.022 or 1.02	42 × 1.02 = 42.84	2 × 153 = 3.06	45.90	45.00		
5- 6	34½	— —				45.00		
6-10	Vacation 2	— —				45.00		

7- 8	36(^{35}) 37	— —					45.00	••
8-12	63(^{34}) (63½)	45.00 ÷ 63½ = .708 or 71.	42 × .71 = 29.82	21½ − 1.06½ = 22.90	52.72	55.76		3.04
9- 2	53(^{20}) (53½)	45.00 ÷ 53½ = 84½	42 × 84½ = 35.49	11½ × 1.26½ = 14.26	49.75	45.00	4.75	
10- 7	58(^{25}) (58½)	45.00 ÷ 58½ = .77	42 × 77 = 32.34	16½ × 1.15½ = 19.06	51.40	49.97	1.43	•
10-21	37½	— —				45.00		
10-28	39½	— —				45.00		
11- 4	53½	45.00 ÷ 53½ = .841 or .84	40 × 84 = 33.60	13½ × 126 = 17.01	50.61	45.23	5.38	•
11-11	41½	45.00 ÷ 41½ = 1.077 or 1.08	40 × 1.08 = 43.20	1½ × 162 = 2.84	46.04	45.00	1.04	
12- 2	51½	50.00 ÷ 51½ = .9708 or .97	40 × 97 = 38.80	11½ × 1.45½ = 16.73	55.53	50.00	5.53	
				Total	due	36.64		

• Amount overtime paid insufficient.

•• Amount overtime paid was excessive.

DEFENDANT'S EXHIBIT No. 2

Basic Hourly Rates and Guaranteed Weekly Earnings

ALL Regular Employees (Excluding Officers and Department Managers)

Basic Hourly Rate	.30	.31-.40	41.-50.	.51-.60	.61-.70	.71-.80	.81-.90	.91-$1.	Over 1.01	
Weekly Earnings Guaranteed	12.00-18.00	18.01-24.00	24.01-30.00	30.01-36.00	36.01-42.00	42.01-48.00	48.01-54.00	54.01-60.00	Over 60.00	Total
Editorial	8	4	8	8	11	10	8	9	15	81
Illustrating	—	—	3	3	1	—	1	—	1	9
Local Advertising	6	3	3	2	1	2	2	1	10	30
Foreign Advertising	1	—	—	3	1	1	—	—	3	9
Classified Advertis.	10	11	5	3	2	1	—	—	1	33
City Circulation	21	7	9	3	3	4	—	—	—	47
General Circulation	3	12	6	3	5	3	—	1	2	35
Composing	—	4	2	3	—	1	—	1	73	84
Stereotype	—	—	—	—	1	—	—	—	12	13
Press	4	1	2	—	2	1	—	—	23	33
Mailing	—	1	10	1	2	2	—	—	1	17
Auto & Delivery	—	—	—	—	1	—	—	—	1	2
Business	7	3	9	2	3	2	2	3	3	34
Building	9	3	1	4	2	2	—	1	—	22
Administrative	—	—	—	1	—	1	2	—	2	6
Rotogravure	—	—	—	—	—	—	—	—	1	1
Job Room	1	1	—	1	—	—	1	—	1	5
	70	50	58	37	35	30	16	16	149	461

Basic Hourly Rates and Guaranteed Weekly Earnings

ALL Regular Employees (Excluding Officers and Department Managers)

Basic Hourly Rate	.30	.31-.40	41.-50.	.51-.60	.61-.70	.71-.80	.81-.90	.91-$1.	Over 1.01	
Weekly Earnings Guaranteed	12.00-18.00	18.01-24.00	24.01-30.00	30.01-36.00	36.01-42.00	42.01-48.00	48.01-54.00	54.01-60.00	Over 60.00	Total
WFAA Studios	3	5	3	7	5	8	4	1	5	41
Grapevine Plant	1	1	—	—	—	6	1	1	—	10
	4	6	3	7	5	14	5	2	5	51

DEFENDANT'S EXHIBIT No. 3

Employees Weeks ending	Wages	Hours Worked	Explanation
Roosevelt Burleson:			
2-4-39	12.50	32	sick 3 days
2-25-39	15.00	40	sick 1 day
3-4-39	15.00	..	sick 6 days
5-22-39	15.00	..	vacation 6 days
5-29-39	15.00	..	vacation 6 days
9-2-39	3.30		
	12.50	40	
9-23-39	15.00	..	no card
12-21-39 extra (no time	15.00		
5-12-40 worked)	15.00	..	vacation 6 days
5-19-40	15.00	..	vacation 6 days
8-17-40	15.00	9	sick 5 days
9-22-40	15.00	..	sick 6 days
9-29-40	15.00	..	sick 6 days
Charles Prasifka:			
12-17-38	34.00	40¾	sick 1 day
7-8-39	34.00	16	no card, vacation 4 days
7-15-39	34.00	..	vacation
7-22-39	34.00	32	vacation 2 days
12-21-39 extra (no time	34.00		
1-27-40 worked)	34.00	30¾	sick 2 days
5-18-40	34.00	40	1 day
6-8-40	34.00	40¼	1 day
6-15-40	34.00	38¼	sick 1 day
6-29-40	34.00	40	vacation 1 day
7-7-40	34.00	..	vacation
7-14-40	34.00	8	vacation 5 days
10-26-40	34.00	40¼	sick 1 day
11-23-40	34.00	40	holiday
12-20-40 extra (no time	35.40		
12-28-40 worked)	34.00	40	holiday

Employees Weeks ending	Wages	Hours Worked	Explanation
Byron Bates:			
12-26-38	$14.50	36	2 holidays
6-19-39	14.50	..	vacation
6-26-39	14.50	..	vacation
12-4-39	15.30	39	no explanation
12-21-39 extra (no time	15.30		
12-25-39 worked)	15.30	39	holiday
1-1-40	15.30	39	holiday
6-17-40	15.30	39	vacation 1 day
5-24-40	15.30	..	vacation
7-1-40	15.30	9	vacation 5 days
7-8-40	16.50	40	holiday
12-20-40 extra (no time	16.60		
1-6-41 worked)	16.50	39	holiday
T. J. Dimmons:			
6-18-39	40.00	40	vacation 1 day
6-26-39	40.00	..	vacation
7-3-39	40.00	8	vacation 5 days
9-18-39	40.00	40	no explanation
11-13-39	45.00	32	honeymoon
11-20-39	45.00	8	honeymoon
12-21-39 extra (no time	45.00		
12-20-40 extra - worked)	50.70		
12-25-39	45.00	40	no explanation
El Paul Crume:			
8-21-39	35.00	..	vacation
8-28-39	35.00	..	vacation
9-4-39	35.00	32	vacation 2 days
12-21-39 extra (no time	35.00		
1-15-40 worked)	35.00	39½	no explanation
2-5-40	40.00	37.55	no explanation
2-19-40	40.00	36.55	no explanation
3-11-40	40.00	38¼	no explanation
2-25-40	40.00	..	no explanation

Employees Weeks ending	Wages	Hours Worked	Explanation
E. Paul Crume (Continued)			
4-29-40	40.00	39	no explanation
5-20-40	40.00	28	no explanation
6-24-40	40.00	35	no explanation
8-19-40	40.00	24	vacation 3 days
8-26-40	40.00	..	vacation
9-2-40	40.00	..	vacation
12-20-40 extra (no time worked)	41.50		
Ruth Moffett:			
5-29-39	18.00	..	vacation 6 days
7-3-39	18.00	36	holiday
7-24-39	18.00	..	vacation 6 days
11-27-39	18.00	36	holiday
12-21-39 extra (no time	18.00		
1-1-40 worked)	18.00	36	holiday
2-5-40	18.00	24	3 days off
8-19-40	18.00	..	vacation 6 days
8-26-40	18.00	..	vacation 6 days
12-20-40 extra (no time	18.70		
12-30-40 worked)	18.00	36	holiday
Audrey Batts:			
12-26-38	18.00	36½	holiday
9-18-39	18.00	..	vacation 6 days
9-25-39	18.00	..	vacation 6 days
12-21-39 extra (no time	18.00		
9-9-40 worked)	18.00	..	vacation 6 days
9-16-40	18.00	..	vacation 6 days
12-20-40 extra (no time	18.70		
12-30-40 worked)	18.00	36	holiday
O. L. Bagwell:			
7-31-39	32.00	36	vacation 1 day
8-7-39	32.00	..	vacation 6 days
8-14-39	32.00	12	vacation 5 days

Employees Weeks ending	Wages	Hours Worked	Explanation
O. L. Bagwell (Continued)			
12-21-39 extra (no time	32.00		
8-19-40 worked)	32.00	36	vacation 1 day
8-26-40	32.00	12	vacation 5 days
9-2-40	32.00	..	vacation 6 days
12-20-40 extra (no time worked)	32.00		
William Snodgrass:			
6-26-39	20.00	..	vacation 6 days
7-3-39	20.00	..	vacation 6 days
7-10-39	....	..	.....
7-17-39	....	..	.....
11-13-39	20.00	10	sick 3 days
12-21-39 extra (no time	20.00		
9-9-40 worked)	20.00	..	vacation 6 days
9-16-40	20.00	..	vacation 6 days
12-20-40 extra (no time worked)	20.00		
Kay Lewis:			
5-29-39	35.00	..	vacation
6-5-39	35.00	..	vacation
12-11-39	35.00		no card, sick 3 days
12-18-39	35.00	8	sick
12-21-39 extra (no time	35.00		
2-5-40 worked)	35.00	8	sick
3-4-40	35.00	21	sick
5-27-40	35.00	..	no card, vacation
6-3-40	35.00	..	no card, vacation
7-29-40	35.00	35	sick
12-16-40	35.00	28	sick
12-20-40 extra (no time worked)	36.40		

Employees Weeks ending	Wages	Hours Worked	Explanation
Helen Maureen McCune Lovell:			
11-28-38	18.00	29	no explanation
12-26-38	18.00	36	holiday
6-19-39	18.00	40	vacation 1 day
9-18-39	18.00	36	vacation 1 day
9-25-39	18.00	8	vacation 5 days
11-27-39	18.00	36	holiday
12-11-39	18.00	30	honeymoon
12-19-39 extra (no time	18.00		
12-25-39 worked)	18.00	36	holiday
1-1-40	18.00	36	holiday
1-8-40	18.00	39	no explanation
1-29-40	18.00	29	sick 2½ days
7-8-40	18.00	35	holiday
7-22-40	18.00	..	vacation
7-29-40	18.00	..	vacation
8-5-40	18.00	8	vacation 5 days
11-4-40	18.00	37½	no explanation
11-25-40	18.00	34	holiday
12-20-40 extra (no time	18.70		
12-30-40 worked)	18.00	32½	holiday
1-6-31	18.00	35	holiday
Bernice Vickers:			
12-26-38	25.00	32	2 holidays
2-6-39	27.00	40	sick 1 day
4-3-39	25.00	8	sick 5 days
6-5-39	25.00	36	vacation 1 day
6-12-39	25.00	..	vacation 6 days
6-19-39	25.00	8	vacation 5 days
11-27-39	27.50	36	holiday
12-21-39 extra (no time	27.50		
12-25-39 worked)	27.50	36	holiday
1-1-40	27.50	36	holiday
1-29-40	27.50	20	sick 3 days
2-5-40	27.50	8	sick 5 days

Employees Weeks ending	Wages	Hours Worked	Explanation
Bernice Vickers (Continued)			
4-22-40	27.50	32	sick 2 days
5-6-40	27.50	36	1½ days off
7-8-40	27.50	12	vacation 4 days
7-15-40	27.50	..	vacation 4 days
7-22-40	27.50	24	vacation 2 days
11-25-40	27.50	34¾	holiday
12-20-40 extra (no time worked)	28.65		
Early Walker:			
12-26-38	18.90	40	holiday
9-5-39	18.90	..	vacation
9-12-39	18.90	..	vacation
9-19-39	18.90	24	3 days off
12-21-39 extra (no time worked)	18.90		
7-23-40	18.90	..	vacation 6 days
7-30-40	18.90	8	vacation 5 days
12-20-40 extra (no time worked)	19.65		
Joe A. Greely:			
7-17-39	16.00	32	vacation 2 days
7-24-39	16.00	..	vacation 6 days
7-31-39	16.00	24	vacation 4 days
12-21-39 extra (no time worked)	16.00		
8-5-40	16.00	40	vacation 1 day
8-12-40	16.00	..	vacation 6 days
8-19-40	16.00	12	vacation 5 days
12-2-40 extra (no time worked)	16.65		
Clifton B. Mills:			
11-28-38	37.50	24	3 days off
12-26-38	37.50	16	4 days off sick

Employees Weeks ending	Wages	Hours Worked	Explanation
Clifton B. Mills (Continued)			
4-3-39	37.50	40	1 day off
6-26-39	30.00	..	vacation 6 days
7-3-39	40.00	..	vacation 6 days
12-4-39	40.00	25	3 days off
12-21-39 extra (no time	40.00		
1-29-40 worked)	42.50	..	vacation 6 days
8-5-40	42.50	..	vacation 6 days
12-25-40	42.50	30½	2 days off
12-20-40 extra (no time	43.05		
1-13-41 worked	42.50	41½	1 day off
B. C. Monroe:			
5-1-39	29.50	32	illness in family
7-10-39	32.50	..	vacation 6 days
7-17-39	32.50	..	vacation 6 days
12-21-39 extra (no time	32.50		
12-25-39 worked)	32.50	40	holiday
4-29-40	32.50	40	1 day off, out of city
6-10-40	32.50	..	vacation 6 days
6-17-40	32.50	..	vacation 6 days
9-16-40	34.00	16	4 days off, mother's illness
9-23-40	34.00	..	6 days off, mother's illness
10-14-40	34.00	24	3 days off
12-20-40 extra	34.65		
Harrill Eastus:			
6-12-39	18.00	..	no card, vacation 6 days
6-19-39	18.00	22½	3 days off
7-10-39	18.00	30	2 days off
11-13-39	18.00	37½	1 day off
11-20-39	18.00	37½	1 day off sick
11-27-39	18.00	37½	1 day off sick
12-21-39 extra (no time	18.00		
2-12-40 worked)	18.00	37½	1 day off sick
4-8-40	19.20	39½	1 day off sick

Employees Weeks ending	Wages	Hours Worked	Explanation
Harrill Eastus (Continued)			
5-13-40	18.00	..	vacation 6 days
7-15-40	18.00	26	2½ days off sick
7-22-40	18.00	19½	3½ days off sick
7-29-40	18.00	..	6 days off sick
9-23-40	18.00	22½	3 days off sick
10-14-40	18.00	25½	2½ days off sick
10-21-40	18.00	..	6 days off sick
10-28-40	18.00	40	1 day off sick
11-25-40	21.00	42½	1 day off holiday
12-2-40	18.00	34	1½ days off sick
12-20-40 extra (no time	20.65		
12-30-40 worked)	18.00	30½	2 days off
Richard West:			
3-6-39	35.00	32	sick 2 days
3-13-39	35.00	..	sick 6 days
3-20-39	35.00	..	sick 6 days
3-27-39	35.00	..	sick 6 days
4-3-39	35.00	..	sick 6 days
11-13-39	35.00	17	vacation 4 days
11-27-39	35.00	39	holiday
12-21-39 extra (no time	35.00		
12-25-39 worked)	35.00	40	holiday
1-1-40	35.00	39	holiday
2-5-40	35.00	31	vacation 2 days
3-5-40	40.00	20	sick 2 days
7-8-40	40.00	36	holiday
7-22-40	40.00	..	vacation
7-29-40	40.00	8	vacation 5 days
11-4-40	40.00	34	quit - pd. full week
J. Leonard Brewer:			
12-26-38	22.50	38	holiday
7-10-39	25.50	3½	vacation 6 days
7-17-39	25.50	4	vacation 6 days

Employees Weeks ending	Wages	Hours Worked	Explanation
J. Leonard Brewer (Continued)			
11-6-39	25.50	40	1 day sick
11-27-39	25.50	39	holiday
12-21-39 extra (no time	23.00		
12-25-39 worked)	25.50	38	holiday
3-18-40	30.50	..	no card
7-8-40	30.50	37	vacation 1 day
7-15-40	30.50	3	vacation 6 days
7-22-40	30.50	10½	vacation 5 days
10-21-40	30.50	36½	no explanation
11-25-40	30.50	35¾	holiday
12-20-40 extra (no time	31.55		
worked)			
John Newnam:			
12-26-38	15.00	33½	2 holidays
7-3-39	15.00	37	vacation 1 day
7-10-39	15.00	..	vacation 6 days
7-17-39	15.00	8	vacation 5 days
12-21-39 extra (no time	16.00		
12-25-39 worked)	16.00	37	holiday
3-25-40	18.00	40	no card, 1 day sick
6-17-40	18.00	37½	vacation 1 day
6-24-40	18.00	..	vacation 6 days
7-1-40	18.00	..	vacation 6 days
7-8-40	18.00	37½	holiday
9-16-40	18.00	30	vacation 2 days
11-4-40	18.00	37½	sick 1 day
11-25-40	18.00	32	holiday
12-20-40 extra (no time	18.70		
12-30-40 worked)	18.00	37½	holiday
1-6-41	18.00	38	holiday
D. W. Martin:			
12-26-38	11.00	36	holiday
8-7-39	11.00	..	vacation 6 days

Employees Weeks ending	Wages	Hours Worked	Explanation
D. W. Martin (Continued)			
8-14-39	11.00	14	vacation 3 days
11-27-39	12.60	35	holiday
12-21-39 extra (no time	12.60	..	
12-25-39 worked)	12.60	34	holiday
12-31-39	12.60	35	holiday
1-22-40	12.60	14	sick 4 days
3-5-40	15.30	32	no explanation
8-5-40	15.30	..	vacation
8-12-40	15.30	..	vacation
8-19-40	15.30	..	vacation
8-27-40	15.30	7½	vacation 5 days
11-11-40	15.60	30	2 days army leave
12-20-40 extra (no time worked)	13.65		
Charles M. Wilson:			
12-26-38	23.50	32	2 holidays
5-15-39	30.00	36½	vacation 1 day
5-22-39	30.00	..	vacation 6 days
5-29-39	30.00	8	vacation 5 days
11-27-39	30.00	36½	holiday
12-21-39 extra (no time	30.00		
12-25-39 worked)	30.00	32	holiday with 1 extra day
1-1-40	30.00	40	holiday
6-10-40	37.50	35½	vacation 1 day
6-17-40	37.50	..	vacation 6 days
6-24-40	37.50	8	vacation 5 days
7-8-40	37.50	34½	holiday
9-16-40	37.50	34	no explanation
11-25-40	37.50	34	holiday
12-20-40 extra (no time	37.15		
12-30-40 worked)	37.50	38	holiday
Nathan Fair:			
4-15-39	20.40	24	3 days sick
7-24-39	20.40	..	vacation

Employees Weeks ending	Wages	Hours Worked	Explanation
Nathan Fair (Continued)			
7-31-39	20.40	..	vacation
12-21-39 extra (no time	20.40		
7-21-40 worked)	20.40	..	vacation
12-20-40 extra (no time worked)	21.20		
Robert Mountique:			
3-25-39	15.00	30	sick 2 days
11-25-39	15.00	..	vacation
6-12-39	15.00	32½	sick 2 days
12-2-39	15.00		no card, sick 6 days
12-21-39 extra (no time	15.00		
3-11-40 worked	15.00		no card (44 hrs.)
6-17-40	15.00		no card vacation 6 days
6-24-40	15.00		no card vacation 6 days
12-20-40 extra (no time worked)	16.40		
Roy Conkle:			
12-4-39	26.50	29½	sick 2 days
12-21-39 extra (no time	26.50		
12-25-39 worked)	26.50	36¾	holiday
6-17-40	26.50	..	vacation
6-24-40	26.50	..	vacation
12-20-40 extra (no time worked)	27.55		
Hal Morrow:			
8-21-39	30.00	..	vacation
8-28-39	30.00	..	vacation
12-21-39 extra (no time	30.00		
7-15-40 worked)	30.00	..	vacation 6 days
7-22-40	30.00	..	vacation 6 days
12-20-40 extra (no time worked)	31.20		

Employees Weeks ending	Wages	Hours Worked	Explanation
Kenlen Bates Crannell:			
7-10-39	60.00	8	vacation 5 days
7-17-39	60.00	..	vacation 6 days
7-24-39	60.00	..	sick
7-31-39	60.00	..	"
8-7-39	60.00	..	"
8-14-39	60.00	..	"
8-21-39	60.00	..	"
8-28-39	60.00	..	"
9-4-39	60.00	..	"
9-11-39	60.00	..	"
9-18-39	60.00	12	"
9-25-39	60.00	24	"
10-2-39	60.00	24	"
10-9-39	60.00	20	"
10-16-39	60.00	24	"
10-23-39	60.00	24	"
10-30-39	60.00	24	"
11-6-39	60.00	24	"
11-13-39	60.00	24	"
11-20-39	60.00	24	"
11-27-39	60.00	20	"
12-4-39	60.00	24	"
12-11-39	60.00	24	"
12-18-39	60.00	24	"
12-21-39 extra (no time	60.00		
12-25-39 worked)	60.00	20	"
12-31-39	60.00	27	"
1-8-40	60.00	28	"
1-15-40	60.00	30	"
1-22-40	60.00	29	"
1-29-40	60.00	29	"
2-5-40	60.00	30	"
2-12-40	60.00	32	"
2-19-40	60.00	32	"
2-26-40	60.00	35	"
3-4-40	60.00	30	"

Employees Weeks ending	Wages	Hours Worked	Explanation
Kenlen Bates Crannell (Continued)			
3-11-40	60.00	34	"
3-18-40	60.00	34	"
3-25-40	60.00	34	"
8-5-40	60.00	35	vacation 1 day
8-12-40	60.00	7	vacation 5 days
12-20-40 extra (no time	62.40		
1-29-41	60.00	26	vacation 2 days
Cyrus C. Anderson:			
12-26-38	42.50	37½	holiday
5-15-39	42.50	39	vacation 1 day
5-22-39	42.50	..	vacation 6 days
5-29-39	42.50	11½	vacation 5 days
2-26-40	45.00	24	sick 3 days
5-20-40	52.50	42½	vacation 1 day
5-27-40	52.50	8	vacation 5 days
8-19-40	52.50	8	vacation 5 days
11-25-40	52.50	37½	holiday
12-20-40 extra (no time	53.05		
12-30-40 worked)	52.50	32½	holiday
1-6-41	52.50	14	sick 4 days
12-21-39 extra (no time worked)	45.00		
Louise Bass:			
5-15-39	4.00	6	
	22.00	40	
5-22-39	20.00	..	vacation 6 days
5-29-39	20.00	..	vacation 6 days
12-21-39 extra (no time	20.00		
8-26-40 worked)	20.00	..	vacation 6 days
9-2-40	20.00	..	vacation 6 days
11-25-40	22.00	3	
		37	holiday
12-20-40 extra (no time	23.00		
12-30-40 worked)	22.00	3	
		38	holiday

Employees Weeks ending	Wages	Hours Worked	Explanation
J. E. Lockhart, Jr.:			
10-31-38	25.00	41½	1 day funeral
12-12-38	27.50	39½	1½ day sick
12-26-38	27.50	41	holiday
6-5-39	32.50	43	1 day off
8-14-39	30.00	40	1 day vacation
8-21-39	30.00	..	vacation
8-28-39	32.50	8	vacation 5 days
11-27-39	32.50	37½	holiday
12-21-39 extra (no time	30.00		
12-25-39 worked)	32.50	37	holiday
2-5-40	32.50	36½	1 day off
5-6-40	32.50	38½	vacation 1 day
5-13-40	30.00	..	vacation 6 days
5-20-40	32.50	13	vacation 5 days
11-18-40	37.50	26½	1 holiday, 2 days vacation
12-20-40 extra (no time	35.05		
1-20-41	37.50	41½	holiday

DEFENDANT'S EXHIBIT No. 4

WFAA Employees

Employees	Christmas Bonus		Sick Absences	
	1939	1940	1939	1940
W. Hal Thompson	42.50	47.60	4 days	34 days
J. Loran Wicker	45.00	48.68	38 "	25 "
Olin S. Brown	45.00	48.27	3 "	0 "
Mary Louise Crowdus	not with us	9.95		0 "
Eugene S. Martin	30.00	32.90	0	0
James S. Alderman	45.00	48.68	83	0
Denton Eudell Martin	20.00	21.68	1	5
Cecil I. Hartsell	50.00	52.99	8	5
Teddy P. DeHay	30.00	33.08	0	0
William C. Ellis	55.00	57.29	17	14
Arthur C. Kuehn	45.00	48.18	0	0
Velma Boyce	35.00	37.26	20	10
T. W. Sharpe	not with us	14.14	0	0
James Orville Raines	17.50	22.75	2	4
Charles D. Armentrout	35.00	48.76	8	0

In general, absences shown reflect absences on account of sickness only, and do not cover absences for other reasons.

Each employee was allowed two weeks' vacation each year.

Holidays were observed July 4, Thanksgiving, Christmas, New Year's, with only skeleton staff at work. Wherever an employee worked Christmas, he was allowed a holiday New Year's Day, and vice-versa.

Judgment.

Filed February 19, 1941.

On February 3, 1941, the above styled and numbered cause came on for hearing and all parties having appeared and announced ready for trial, the court heard the evidence and arguments of counsel, and being fully advised, does find that the facts and the law are with the defendant and against the plaintiff and so does order, adjudge and decree that the said cause be, and the same is hereby, dismissed with prejudice. Further, it is ordered that no costs herein shall be taxed against the defendant. To all such actions of the court the plaintiff duly excepted.

Rendered February 4, 1941.

Wm. H. Atwell
United States District
Judge Presiding.

Court's Oral Remarks on February 19, 1941, upon signing and entering the formal judgment.

Filed—Feb. 19th, 1941.

THE COURT: I have gone over these judgments, and while I was of the opinion, and am still of the opinion, that the judgment in No. 301 is somewhat prolix, I cannot criticize it as being unresponsive to the issues made by the pleadings.

As has been stated by the attorney for the Administrator, at the conclusion of the testimony in the combined cases, the court felt that Mr. Street's acts, as an individual, should be enjoyed. At the time of making that announcement, I did not know the pleading of the disclaimer by him. I was later advised of that fact. His disclaimer, I do not conceive, would deprive him of his right to stand upon his original motion to dismiss; that motion having been ruled by the court, against him. As the court shall proceed by those pleadings, he does not

lose appellate rights on his motion to dismiss. He has a right to have everything the court did, reviewed. If the court made an error in ruling that the plaintiff had a right to sue him as he had a right to sue it under the Act for its employees, then that error would be remedied by the other court.

As I see the case, and we sometimes see it through colored glasses, Mr. Street had that individual right to represent individual employees the same as I have, or, you have, or, anyone has. An employee may choose such representatives as they wish. As I said before, whether his superior would permit him to act in that capacity, is another matter, and a matter over which this court has no jurisdiction.

He, herefore, being a party, there is nothing for the court to do but act in the subsequent movements in accordance with the pleadings. He comes in and says, "I disclaim." He is entitled to be protected on that disclaimer. No costs go against him. If the court is correct in its preliminary ruling, then he is done. If the court is incorrect in its preliminary ruling, he will have his cost in that proceeding.

I think this judgment is all right, gentlemen. I mean, it expresses the judgment of the court on the various proceedings.

I do not think it fair in the judgment to take away from the plaintiff in one case, and from the defendant in another case. But, in the victory it won, if it won a correct victory, it is entitled to all the fruits of that vicory. If it has not won a victory, it is not entitled to it. This should all be expressed in the judgment. I mean all that was done here.

I consider it a very interesting case, and a case that I think has been ruled justly as between employer and employee, and we will find out whether or not it has been.

Filed Feb. 19, 1941, at 3 o'clock P.M.

STIPULATION relating to exhibits marked "Plaintiff's Exhibits Nos. 14, 15, 20, 21, 22 and 23", and Defendant's Exhibit No." Filed March 14, 1941.

It is hereby, for the purpose of abbreviating the record on appeal, stipulated and agreed by and between the parties in the above-styled cause:

I.

That the exhibit marked Defendant's Exhibit No. 1, a copy of the employees' newspaper, Sparks, may be omitted from said record, and in lieu thereof insert in said record the following: "A copy of the newspaper, Sparks, published by the employees of The Dallas Morning News, dated January 28, 1941; such copy of such newspaper being described on the second page as follows:

'SPARKS—an independent employees' magazine, published once a week by and for employees of the A. H. Belo Corporation and their families. The News management is not responsible for any material which may appear in Sparks'; such copy of such newspaper containing in a column headed 'Letters' the following:

> 'SPARKS: One year ago, Jan. 25, I came to Dallas and The News, a stranger looking for a job. I am still grateful for the opportunity this paper offered me. It's been just a year but I feel like it has been five—I have come to feel so much at home here.
>
> 'There was no razzing of the greenhorn and his mistakes those first few months. Rather, there was a friendly, helpful hand extended on all sides. There was no aloofness on the part of staff members. Instead, a warm and valued acquaintanceship was offered. This spirit even seemed to be reflected in the citizenry of Dallas itself.
>
> 'With so many of The News family observing their twenty-first birthday each passing week, the first birthday of a cub reporter is insignificant.

Nevertheless, to The News and fellow Round Tables I want to say, "Thanks".

VAUGN M. BRYANT:'

and containing on Page 2, in two-column box, the following:

'The One-Year Man

'In another space on this page is reproduced a letter from a Sparks reader who has just completed a year with The Dallas Morning News. It contains an expression of his feelings, simply put, that strikes deep into the spirit of the institution of which The News is the center and of which he is a part.

'There are numbers of News employees who have passed twenty-one years of association. There are others whose service is measured in months, weeks or days. Between the newest addition to the personnel and those with twenty, thirty, forty or more years there is a great difference in ages, in outlook. But all of them, from the one-year man through the great mass of employees who range between that and several decades of service, have the same spirit.

'One could invoke a thoughtful Lincoln to put that spirit into words, a golden-voiced Roosevelt to tell in sonorous tones of its permanence. Yet neither, at the peak of inspiration, would achieve the desired effect.

'The thing that made the one-year man arrive in these twelve months at the fact that he had been accepted as one of a group who numbered among them men and women of ripe years is the thing that makes The News, WFAA and KGKO able to have a Round Table. An employee is put on his own when he comes here. If he has the stuff, he stays and is accepted by his fellow employees. If he doesn't have the stuff he doesn't stay and there is no question of acceptance. He goes and is soon forgotten.

'It is nice to know that among the many who have come here through the years, few have gone into the forgotten group.'"

and containing on page 4, in three columns, the following article:

'Ask the AP—And Giant Force Goes to Work

'Staff Writer Tells How It Serves News

'Co-operative Runs Down Stories Asked by Member Papers

'(Editor's Note.—This, the first of two articles, dwells on the co-operation between The Dallas Morning News and the Associated Press. A later one will outline the functions of the Associated Press Texas Bureau, which has offices in The News Building.)

'By L. C. Sloan.

Associated Press Staff.

'In The Dallas News city room hang two framed placards which outline membership relations with the Associated Press.

'They read in part:

'"This paper is an integral part of the Associated Press and the Associated Press is an integral part of this paper.

'"Wholehearted co-operation is the key to our relations with the Associated Press and its representatives. To all intents and purposes each of the employees of this paper is working for the Associated Press and each Associated Press employee is working for this paper."

'Each March 15 G. B. Dealey's first dictation of the day is a memorandum to his managing editor asking confirmation that the placards are in their accustomed places. Mr. Dealey has in his files the memoranda and replies for many years.

'Thus he sees to it personally that The News always has before it these reminders:

'1. That it is an active member, not a sub-

scriber or a client, of the co-operative association of 1,400 newspapers.

'AP Men are Newsmen, Too.

'2. That it has vested rights in the Associated Press for which, as every other member paper, it assumes definite obligations. (In the editorial page mast head of The Dallas Morning News the following notice appears daily: "The Associated Press is exclusively entitled to use for publication all news dispatches credited to it or not otherwise credited in this paper and local news of spontaneous origin published herein.)

'3. That every reporter on every other Associated Press member paper is a potential reporter for The Dallas News.

'"Eternal vigilance is the price of liberty," Mr. Dealey says.

'His vigilance probably has much to do with fostering co-operation between the staffs of The News and the Dallas Associated Press Bureau.

'It is the purpose here to explain something of how they work together.

'All alert newspaperfolk are aware that the task of the Associated Press is the swift collection and distribution of accurate, reliable, impartial information—the important news of the world.

'They know the Associated Press is exclusively entitled to the local news appearing in member papers.

'But unless they have had occasion to use Associated Press facilities, some may not know fully how far beyond important world news the organization functions in helping its members provide each other with information of a regional or purely local nature.

'"Ask the AP" is a familiar notation on memoranda flowing from various departments of The Dallas News across the desks of the noisy Associated Press office in the southeast corner of the city room.

'Many Requests Handled.

'Managing Editor Harry Withers may want to print what some Dallas leader says at a Methodist Church meeting in Tennessee. Sports Editor Charles Burton may need the score of Dallas players in a California golf tournament. City Editor Ted Barrett may hear that a Dallas hotel has been sold by a Chicago corporation, and want Chicago to investigate.

'Scores of requests like these are handled daily from Texas members.

'An instance of what AP members do for each other occurred recently when Reporter Harry McCormick heard that the New Orleans Federal Court of Appeals had handed down a decision involving a prominent Dallas financier.

'McCormick's request for confirmation was relayed through Shreveport to the New Orleans bureau. That bureau replied the court records were locked up and the story would be available the following day.

'Dallas then messaged that it was highly important that The News get the story that night and suggested a telephone call to the court clerk. The New Orleans bureau asked a member paper to help. A reporter was assigned to the story and got enough information from the clerk to enable McCormick to write a top story for The News.

'Not News in New Orleans.

'The case was of no news value in New Orleans and in all probability the newspaper there didn't run a line on it.

'The Dallas News city desk frequently performs for other member papers the same sort of service it received from New Orleans. Great files of such exchanges of requests accumulate over the nation daily.

'The Dallas and New Orleans cooperation is emphasized because the setups are parallel in that

staffs of the member papers and the Associated Press work in the same offices.

'Many other member newspapers have no AP staff men in their offices and their own editors must prepare and file on the wires their requests and the information they provide for others.'"

II.

That original copies of Interpretative Bulletin No. 4, entitled "Maximum Hours and Overtime Compensation," issued by the office of the Administrator of the Wage and Hour Division, U. S. Department of Labor, marked Plaintiff's Exhibit No. 24, may be inserted in said record in lieu of photostatic or typewritten copies thereof;

III.

That of the three photostatic copies of advertisements published by the A. H. Belo Corporation in Editor and Publisher magazine, marked Plaintiff's Exhibit No. 14, only the advertisement published in the issue of said magazine dated January 28, 1939, shall be included in said record, and in lieu of the other copies of said advertisements the following description shall be inserted in said record: "The advertisements published in the January 27, 1940, issue of said Editor and Publisher magazine are similar in nature to the advertisement published in the January 28, 1939, issue of said magazine;

IV.

That the exhibit marked Plaintiff's Exhibit No. 15, a copy of The Retail News, may be omitted from said record, and in lieu thereof insert in said record the following description: "A copy of The Retail News dated September-October, 1940";

V.

That original copies of the booklet entitled "Making a Metropolitan Newspaper," published by A. H. Belo

Corporation, marked Plaintiff's Exhibit No. 20, will be furnished by said A. H. Belo Corporation and said original copies may be inserted in said record in lieu of photostatic or typewritten copies thereof;

VI.

That the exhibit marked Plaintiff's Exhibit No. 21, a copy of The Semi-Weekly Farm News, may be omitted from said record, and in lieu thereof insert in said record the following description: "A copy of The Semi-Weekly Farm News dated September 24, 1940";

VII.

That the exhibit marked Plaintiff's Exhibit No. 22, a copy of The Dallas Morning News, may be omitted from said record, and in lieu thereof insert in said record the following description: "A copy of The Dallas Morning News dated August 20, 1940";

VIII.

That original copies of Title 29, Chapter V, Code of Federal Regulations, Part 516, promulgated by the Administrator of the Wage and Hour Division, U. S. Department of Labor, marked Plaintiff's Exhibit No. 23, may be inserted in said record in lieu of photostatic or typewritten copies thereof.

DATED this the 14th day of March, 1941.

Attorneys for A. H. Belo Corporation, Defendant,

Locke, Locke, Dyer & Purnell

Adair Dyer
Maurice E. Purnell

Attorneys for Philip B. Fleming,
Plaintiff,

Gerald D. Reilly

Gerard D. Reilly
Solicitor

Irving J. Levy

Irving J. Levy
Assistant Solicitor

Llewellyn B. Duke

Llewellyn B. Duke
Regional Attorney

George B. Searls

George B. Searls
Senior Attorney

Robert W. Richards

Robert W. Richards
Assistant Attorney

STIPULATION relating to the exhibits marked "Plaintiff's Exhibits Nos. 6, 7, and 8.

Filed March 14, 1941.

It is hereby, for the purpose of abbreviating the record on appeal, stipulated and agreed by and between the parties in the above-styled cause:

I.

That this stipulation is to be included in the record on appeal in lieu of the exhibits described and numbered as Plaintiff's Exhibits 6, 7, and 8, with the same effect

and for all purposes as if such exhibits were included and set out in full in said record.

II.

That Plaintiff's Exhibits Nos. 6 and 7 include letters issued by the A. H. Belo Corporation on or about October 22, 1938, to certain of its employees over the signature of its president, G. B. Dealey, the receipt of which was acknowledged in writing by said respective employees. That all such letters issued on or about October 22, 1938, were in the following form, the only variations being the necessary ones as to name of employee, amount of "basic rate of pay" and amount of "sum not less than ----------":

"G. B. Dealey, Pres.
James M. Moroney, Sec. and Treas.
Ted Dealey, Vice-Pres.
The Dallas Morning News
The Dallas Semi-Weekly Farm News
Texas Almanac and State Industrial Guide

Office of
G. B. Dealey
President

Owners and Operators of
Radio Station WFAA
THE DALLAS MORNING NEWS
DALLAS, TEXAS

October 22, 1938

James S. Alderman
Station WFAA
Dallas Texas

Dear Sir:—

The Fair Labor Standards Act which goes into effect on October 24, 1938, provides for the following minimum wages and maximum hours of employment:

First year—25¢ per hour minimum
44 hours maximum per week

Second year—30¢ per hour minimum
42 hours maximum per week

Third year—40¢ per hour minimum
40 hours maximum per week

except that employees may work more than the number of hours specified above, provided that overtime rates shall be a minimum of one and one-half times the basic rate.

In order to conform our employment arrangements to the scheme of the Act without reducing the amount of money which you receive each week, we advise that from and after October 24, 1938, your basic rate of pay will be .... 67 .... cents per hour for the first forty-four hours each week, and that for time over forty-four hours each week you will receive for each hour of work not less than one and one-half time such basic rate above mentioned, with a guaranty on our part that you shall receive weekly, for regular time and for such overtime as the necessities of the business may demand, a sum not less than $40.00.

Very truly yours,

G. B. DEALEY
President

Mr. G. B. DEALEY:

This will acknowledge receipt of your letter of October 22nd concerning wages and hours effective October 24, 1938.

(signed) James S. Alderman"

That said Plaintiff's Exhibits Nos. 6 and 7 include letters issued to the employees hereinafter listed, on the dates indicated, and containing the respectively indicated statements as to the "basic rate of pay" and "sum not less than....." for said employees:

Name	Date	"Basic rate"	"Sum not less than ....."	
*James S. Alderman	10-22-38	$0.67	$40.00	(1)
Cyrus C. Anderson	10-22-38	0.67	40.00	(2)
*Charles D. Armentrout	10-22-39	0.59	35.00	(3)
O. L. Bagwell	10-22-38	0.45	26.75	(4)
Byron Bates, Jr.	10-22-38	0.25	14.50	(5)
Mrs. Audrey Batts	10-22-38	0.26	15.50	(6)
*Velma Boyce	10-22-38	0.59	35.00	(7)
J. Leonard Brewer	10-22-38	0.34	20.00	(8)
*Olin S. Brown	10-22-38	0.71	42.50	(9)
Roosevelt Burleson	10-22-38	0.25	15.00	(10)
K. B. Crannell	10-22-38	1.00	60.00	(11)
E. Paul Crume	10-22-38	0.46	27.50	(12)
*Teddy P. DeHay	10-22-38	0.50	30.00	(13)
Harrill Eastus	10-22-38	0.25	15.00	(14)
*William C. Ellis	10-22-38	0.92	55.00	(15)
Nathan Fair	10-22-38	0.34	20.40	(16)
Joe A. Greeley	10-22-38	0.27	16.00	(17)
*Cecil I. Hartsell	10-22-38	0.84	50.00	(18)
Kay Lewis	10-22-38	0.59	35.00	(19)
J. E. Lockhart, Jr.	10-22-38	0.42	25.00	(20)
D. W. Martin	10-22-38	0.25	10.00	(21)
*D. Eudell Martin	10-22-38	0.30	17.50	(22)
Clifton B. Mills	10-22-38	0.63	37.50	(23)
Ruth Moffett	10-22-38	0.29	17.00	(24)
B. C. Monroe	10-22-38	0.50	29.50	(25)
Robert Montigue	10-22-38	0.25	15.00	(26)
Hal Morrow (Probably)	10-22-38	0.48	28.00	(27)
Maurine McCune (Helen McCune Lovell)	10-22-38	0.30	18.00	(28)
John Newnam	10-22-38	0.25	15.00	(29)
*James Orville Raines	10-22-38	0.25	15.00	(30)
T. J. Simmons	10-22-38	0.67	40.00	(31)

Name	Date	"Basic rate"	"Sum not less than....."
W. W. Snodgrass	10-22-38	0.34	20.00 (32)
*W. Hal Thompson	10-22-38	0.67	40.00 (33)
Bernice Vickers	10-22-38	0.42	25.00 (34)
Early Walker	10-22-38	0.32	18.90 (35)
Richard West	10-22-38	0.50	30.00 (36)
*J. L. Wicker	10-22-38	0.71	42.50 (37)
Chas. M. Wilson	10-22-38	0.40	23.50 (38)

(*Indicates employees at Station WFAA. Others listed are employed at place of business of The Dallas Morning News.)

III.

That Plaintiff's Exhibits Numbered 6 and 7 include letters issued by the A. H. Belo Corporation after October 24, 1938 to certain of its employees over the signature of its president, G. B. Dealey, the receipt of which was acknowledged in writing by said respective employees. That all such letters issued after October 24, 1938, were in the following form, the only variations being the necessary ones as to date, name of employee, amount of "basic rate of pay" and amount of "sum not less than.....":

"G. C. Dealey, Pres.
James M. Moroney, Sec. and Treas.
Ted Dealey, Vice-Pres.
The Dallas Morning News
The Dallas Semi-Weekly Farm News
Texas Almanac and State Industrial Guide

Office of
G. B. Dealey
President

Owners and Operators of
Radio Station WFAA
THE DALLAS MORNING NEWS
Oldest Business Institution in Texas

10/24/39

Cyrups C. Anderson

The Fair Labor Standards Act which went

into effect on October 24, 1938, provides for the following minimum wages and maximum hours of employment:

First year—25¢ per hour minimum
44 hours maximum per week

Second year—30¢ per hour minimum
42 hours maximum per week

Third year—30¢ per hour minimum
40 hours maximum per week

Sixth year—40¢ per hour minimum
40 hours maximum per week

except that employees may work more than the number of hours specified above, provided that overtime rates shall be a minimum of one and one-half times the basic rate.

In order to conform our employment arrangements to the scheme of the Act, your basic rate of pay will be 75 cents per hour for the maximum number of hours each week as specified by the Act, and that for time over the maximum number of hours per week specified you will receive for each hour of work not less than one and one-half time such basic rate above-mentioned, with a guaranty on our part that you shall receive weekly, for regular time and for such overtime as the necessities of the business may demand, a sum not less than $45.00.

Very truly yours,
G. B. DEALEY
President

Mr. G. B. DEALEY:

This will acknowledge receipt of your letter of Oct. 24, 1939 concerning wages and hours affecting my employment.

/s/ Cyrus C. Anderson

That said Plaintiff's Exhibits Nos. 6 and 7 included letters issued to the employees hereinafter listed on the dates indicated and containing the respectively indicated statements as to the "basic rate of pay" and "sum not less than_____" for said employees:

Name	Date	"Basic rate"	"Sum not less than_____"	
*James S. Alderman	1-30-41	$0.84	$50.00	(1)
Cyrus C. Anderson	10-24-39	0.75	45.00	(2)
" " "	5-14-40	0.88	52.50	
*Charles D. Armentrout	1-30-41	0.71	42.50	(3)
O. L. Bagwell	10-24-39	0.54	32.00	(4)
Byron Bates, Jr.	10-21-39	0.30	15.30	(5)
" " "	7-2-40	0.30	16.50	
Mrs. Audrey Batts	10-24-39	0.30	18.00	(6)
*Velma Boyle	1-30-41	0.63	37.50	(7)
J. Leonard Brewer	10-24-39	0.39	23.00	(8)
" " "	2-5-40	0.47	28.00	
*Olin S. Brown	10-27-39	0.75	45.00	(9)
" " "	1-30-41	0.84	50.00	
Roosevelt Burleson	10-24-39	0.30	15.00	(10)
" "	10-24-40	0.30	15.60	
Roy Conkle	5-30-39	0.45	26.50	(11)
*Mary Louise Crowdus	7-15-40	0.458	27.50	(12)
E. Paul Crume	10-24-39	0.59	35.00	(13)
" " "	1-23-40	0.67	40.00	
*Teddy P. DeHay	1-30-41	0.59	35.00	(14)
Harrill Eastus	10-24-39	0.30	18.00	(15)
*William C. Ellis	1-30-41	0.75	45.00	(16)
" " "	1-30-41	0.67	10.00	
Joe A. Greeley	10-24-39	0.30	16.00	(17)
*Cecil I. Hartsell	1-30-41	0.88	52.50	(18)
J. E. Lockhart, Jr.	10-24-39	0.50	30.00	(19)
" " " "	10-15-40	0.59	35.00	
D. W. Martin	10-23-39	0.30	12.60	(20)
" " "	2-5-40	0.30	15.30	
*D. Eudell Martin	10-24-39	0.333	20.00	(21)
Clifton B. Mills	10-24-39	0.67	40.00	(22)
" " "	6-11-40	0.71	42.50	

Name	Date	"Basic rate"	"Sum not less than"	
Ruth Moffett	10-24-39	0.30	18.00	(23)
B. C. Monroe	10-24-39	0.55	32.50	(24)
" " "	6-18-40	0.57	34.00	
Robert Montigue	10-24-39	0.30	15.00	(25)
" "	10-24-40	0.30	15.60	
Hal Morrow	5-30 39	0.50	30.00	(26)
John Newnam	10-25-39	0.30	16.00	(27)
" "	2-5-40	0.30	18.00	
*James Orville Raines	10-24-39	0.30	17.50	(28)
	undated letter			
" " later than	10-24-39	0.38	22.50	
T. J. Simmons	10-24-39	0.75	45.00	(29)
" " "	4-23-40	0.84	50.00	
*W. Hal Thompson	10-24-39	0.708	42.50	(303
" " "	1-30-41	0.88	52.50	
Bernice Vickers	10-24-39	0.46	27.50	(31)
Richard West	10-24-39	0.59	35.00	(32)
" "	2-12-40	0.66	40.00	
*J. L. Wicker	10-27-39	0.75	45.00	(33)
Chas. M. Wilson	10-24-39	0.50	30.00	(34)
" " "	4-6-40	0.63	37.50	

(*Indicates employees at Station WFAA. Others listed are employed at place of business of The Dallas Morning News.)

Dated this 14th day of March, 1941

ATTORNEYS FOR DEFENDANT
A. H. BELO CORPORATION
Locke, Locke, Dyer & Purnell

Adair Dyer
Maurice E. Purnell

ATTORNEYS FOR PLAINTIFF
PHILIP B. FLEMING, ADMINISTRATOR
OF WAGE AND HOUR DIVISION, UNITED
STATES DEPARTMENT OF LABOR

Gerald D. Reilly

Gerard D. Reilly, Solicitor

Irving J. Levy

Irving J. Levy, Assistant Solicitor

Llewellyn B. Duke

Llewellyn B. Duke, Regional Attorney

George B. Searls

George B. Searls, Senior Attorney

Robert W. Richards

Robert W. Richards, Associate Attorney

NOTICE OF APPEAL Filed March 4, 1941.

Notice is hereby given that Philip B. Fleming, Administrator of the Wage and Hour Division of the United States Department of Labor, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Fifth District from the final judgment dated February 4, 1941, and entered in this action on the 19th day of February, 1941.

Gerard D. Reilly

Gerard D. Reilly, Solicitor

Irving J. Levy

Irving J. Levy, Assistant Solicitor

Llewellyn B. Duke

Llewellyn B. Duke, Regional Attorney

George B. Searls

George B. Searls, Senior Attorney

Robert W. Richards

Robert W. Richards, Associate Attorney
United States Department of Labor

DESIGNATION OF RECORD AND PROCEEDINGS TO BE CONTAINED IN THE RECORD ON APPEAL.

Filed March 18, 1941.

To: The Clerk of the Above Named Court:

In accordance with Rule 75(a) of the Federal Rules of Civil Procedure, you are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Fifth Circuit, pursuant to the notice of appeal filed in the above entitled cause, and to include in such transcript of record the following, which constitute the complete record and all the proceedings and evidence in this action:

1. Plaintiff's complaint and summons therein.
2. Defendant's answer.
3. The following pages of the transcript of the proceedings and testimony before Judge Atwell, at Dallas, Texas, on February 3 and 4, 1941: page 1 to and including line 20 of page 6; page 30 to and including line 5, page 213; page 214 to and including page 221 (Court's Oral Opinion, and Findings of Fact, and Conclusions of Law). Two copies of these

portions of the stenographic transcript are filed herewith.

4. The exhibits marked "Plaintiff's Exhibits Nos. 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, and 25.

5. The exhibits marked "Defendant's Exhibits Nos. 2, 3, and 4.

6. A copy of the final judgment entered herein.

7. A copy of the court's oral remarks on February 19, 1941, upon signing and entering the formal judgment herein.

8. The stipulation entered by the parties hereto, dated the 14th day of March, 1941, relating to exhibits marked "Plaintiff's Exhibits Nos. 14, 15, 20, 21, 22, and 23", and, "Defendant's Exhibits No. 1, same being filed on the 14th day of March, 1941.

9. The stipulation entered by the parties hereto dated the 14th day of March, 1941, relating to the exhibits marked "Plaintiff's Exhibits Nos. 6, 7, and 8, same being filed on the 14th day of March, 1941.

10. Notice of appeal with date of filing

11. The designation of record and proceedings to be contained in the record on appeal.

12. Acknowledgment of service of designation of record.

Said transcript is to be prepared as required by law and the rules of this Court and the Federal Rules of Procedure, and is to be filed in the office of the Clerk

of the United States Circuit Court of Appeals for the Fifth Circuit, at New Orleans, Louisiana, on or before the 14th day of April, 1941.

Gerard D. Reilly

Gerard D. Reilly, Solicitor

Irving J. Levy

Irving J. Levy, Assistant Solicitor

Llewellyn B. Duke

Llewellyn B. Duke, Regional Attorney

George B. Searls

George B. Searls, Senior A[illegible]ney

Robert W. Richards

Robert W. Richards, Associate Attorney

Post Office Address
Wage and Hour Division
U. S. Dept. of Labor
824 Santa Fe Bldg.
Dallas, Texas

or

Wage and Hour Division
U. S. Department of Labor
Washington, D. C.

ACKNOWLEDGMENT OF SERVICE OF DESIGNATION OF RECORD.

Filed March 18, 1941.

This acknowledges that a copy of the Designation of Record on Appeal was served upon Locke, Locke, Dyer, and Purnell, attorneys of record for the above named defendant, on this the 17th day of March, 1941.

Locke, Locke, Dyer & Purnell

Adair Dyer
Maurice E. Purnell

Designation by Appellee of Additional Portions of Record and Proceedings to be Contained in the Record on Appeal.

Filed March 22, 1941.

Appellee, A. H. Belo Corporation, has been served with a designation filed by appellant of the portions of the record, proceedings and evidence to be contained in the record on appeal. Such designation omits certain pages and portions of pages of the transcript of the proceedings and testimony before Judge Atwell at Dallas, Texas on February 3 and 4, 1941. Appellee desires that some of such omitted portions of such transcript be included and contained in the record on appeal. Accordingly appellee designates for inclusion in the record on appeal portions omitted by the designation of appellant of the transcript of the proceedings and testimony before Judge Atwell at Dallas, Texas, on February 3 and 4, 1941, to-wit: page 7, beginning at line 13 (beginning of the testimony of M. M. Donosky), to and including page 29; page 213, beginning at line 6 and including the rest of the page.

Locke, Locke, Dyer & Purnell
Adair Dyer
Maurice E. Purnell
Attorneys for Appellee,
A. H. Belo Corporation.

Appellant, Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, by his undersigned attorneys, hereby acknowledges service and receipt of a copy of the foregoing designation of additional portions of the record, proceedings and evidence to be contained in the record on appeal, this 21st day of March, 1941.

Llewellyn B. Duke
Regional Attorney

By Robert W. Richards
Associate Attorney

STATEMENT OF POINTS TO BE RELIED UPON ON APPEAL

Filed March 22, 1941.

Plaintiff-appellant, Philip B. Fleming, having filed with the District Court a designation of the portions of the record to be contained in the record on appeal, states the points on which he intends to rely on appeal as required by Rule 75(d) of the Federal Rules of Civil Procedure, as follows:

1. The court erred in dismissing the action.

2. The court erred in ruling that the Government, or the plaintiff, or his representatives, should have disclosed the identity of any complaining employee.

3. The court erred in ruling that Section 7 of the Fair Labor Standards Act of 1938 "merely pretends to be and is a statute against less than a minimum wage."

4. The court erred in ruling that the defendant's method of compensating its employees complied with the requirements of Section 7 of the Fair Labor Standards Act of 1938.

5. The court erred in making its finding of fact numbered 1: "That there has been no violation of the wage and hour statute by the A. H. Belo Corporation."

6. The court erred in making its finding of fact numbered 2: "That all of its employees have been paid in excess of the requirements of the wage and hour act."

7. The court erred in making its finding of fact numbered 3: "That the regular wage upon which overtime or time and a half has been figured in each instance is the regular wage that the employee and employer had contracted for, and that such regular wage is in excess of the legal minimum wage."

8. The court erred in failing to find and rule that the defendant in its employment of many of its employees for hours longer than the maximum number of hours specified in Section 7 of the Fair Labor Standards Act of 1938 had violated Sections 7 and 15(a)(2) of said Act in that it failed to compensate such employees for their employment in excess of the hours specified in Section 7 at a rate not less than one and one-half times the regular rates at which they were employed.

9. The court erred in failing to find and rule that as to those employees with whom the defendant purported to enter into agreements setting out what the defendant therein termed "basic rates of pay" and guaranteeing a weekly pay of not less than a sum stated, the regular rates at which they were employed were respectively the amounts they were paid as weekly wages or salaries.

10. The court erred in failing to find and rule that, as to those employees with whom the defendant purported to enter into agreements setting out what the defendant therein termed "basic rates of pay" and guaranteeing a weekly pay of not less than a sum stated, the lawful rate of compensation for hours in excess of the number specified in Section 7 of the Fair Labor Standards Act of 1938 should be not less than the rate obtained by dividing the amount of the weekly wages at which the employee was employed during a given workweek by the number of hours worked by him that week,

and then multiplying the figure so obtained by one and one-half.

11. The court erred in failing to find and rule that the so-called "basic rates" referred to in Points 9 and 10 were fictitious and were not the rates at which the employees were employed.

12. The court erred in failing to find and rule that many of the defendant's employees had been employed in violation of Section 7 of the Fair Labor Standards Act of 1938 in the production of goods which the defendant transported, offered for transportation, shipped, delivered, or sold in interstate commerce, and that by so transporting, offering for transportation, shipping, delivering, and selling such goods in interstate commerce the defendant violated Section 15(a)(1) of said Act.

13. The court erred in failing to find and rule that the defendant in its employment of many of its employees under union contracts for hours in excess of the hours specified in Section 7 of the Fair Labor Standards Act of 1938 had violated Sections 7 and 15(a)(2) of said Act by failing to compensate such employees for their employment in excess of the hours specified in said Section 7 at rates not less than one and one-half times the regular rates at which they were employed.

14. The court erred in failing to find and rule on all the evidence that the defendant had violated Sections 7, 15(a)(1), and 15(a)(2) of the Fair Labor Standards Act of 1938.

15. The court erred in overruling plaintiff's prayer for the issuance of an injunction.

16. The court erred in failing to find and rule that the plaintiff had shown cause for the issuance of an injunction against the defendant restraining it from

violating Sections 15(a)(1) and 15(a)(2) of the Fair Labor Standards Act of 1938.

17. The court erred in failing to order the issuance of an injunction as prayed for by the plaintiff.

Gerald D. Reilly
Gerard D. Reilly
Solicitor

Irving J. Levy
Irving J. Levy
Assistant Solicitor

Llewellyn B. Duke

Llewellyn B. Duke
Regional Attorney

George B. Searls

George B. Searls
Senior Attorney

Robert W. Richards

Robert W. Richards
Associate Attorney

United States Department of Labor
Attorneys for Philip B. Fleming, Administrator of the Wage and Hour Division

Service of a copy of the foregoing acknowledged this March 17, 1941.

Locke, Locke, Dyer & Purnell

Adair Dyer
Maurice E. Purnell
Attys. for A. H. Belo Corporation

Supplemental Designation of Record and Proceedings to be Contained in the Record on Appeal

Filed March 24, 1941.

To: The Clerk of the Above Named Court:

In addition to the portions of the record, proceedings and evidence designated for inclusion in the record on appeal heretofore filed on the 18th day of March, 1941, by the above plaintiff-appellant, Philip B. Fleming, it is further requested that the following be included in the record to be filed in the United States Circuit Court of Appeals for the Fifth Circuit:

(1) The Statement of Points to be Relied upon on Appeal filed on the 22nd day of March, 1941.

(2) The Supplemental Designation of Record and Proceedings to be Contained in the Record on Appeal.

(3) Acknowledgment of Service of Copy of Supplemental Designation of Record.

Gerard D. Reilly

Gerard D. Reilly
Solicitor

Irving J. Levy

Irving J. Levy
Assistant Solicitor

Llewellyn B. Duke

Llewellyn B. Duke
Regional Attorney

George B. Searls

George B. Searls
Senior Attorney

Robert W. Richards

Robert W. Richards
Associate Attorney
Attorneys for Plaintiff-Appellant
Philip B. Fleming

Receipt of Service of Copy
of foregoing acknowledged
March 24, 1941.

Locke, Locke, Dyer & Purnell

Adair Dyer
Maurice E. Purnell
Attorneys for A. H. Belo Corp.

CLERK'S CERTIFICATE

I, Geo. W. Parker, Clerk of the United States District Court for the Northern District of Texas, do hereby certify that the foregoing is a true and correct transcript of the record, and all proceedings in Cause No. 308-Civil, Wherein, Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, is Plaintiff, and A. H. Belo Corporation, is Defendant, as fully as the same now remain on file and of record in my office at Dallas, Texas.

WITNESS my hand officially and the seal of said Court at Dallas, Texas, this the 25th day of March. A. D. 1941.

Geo. W. Parker, Clerk

U. S. District Court, Northern District of Texas, at Dallas.

By— Mary Conger
Deputy.

(SEAL)

That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and submission

Extract from the Minutes of May 28th, 1941

No. 9867

PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR

vs.

A. H. BELO CORPORATION

On this day this cause was called, and, after argument by Irving J. Levy, Esq., Assistant Solicitor, United States Department of Labor, for appellant; and Maurice E. Purnell, Esq., for appellee, was submitted to the Court.

In the United States Circuit Court of Appeals for the Fifth Circuit

No. 9867

PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, APPELLANT

vs.

A. H. BELO CORPORATION, APPELLEE

Appeal From the District Court of the United States for the Northern District of Texas

(June 27, 1941)

Before FOSTER, SIBLEY, and HUTCHESON, Circuit Judges

HUTCHESON, Circuit Judge: Alleging that defendant was subject to the Fair Labor Standards Act of 1938, U. S. C. Title 29, Sec. 201, et sec., appellant brought this suit to enjoin it from violating the provisions of Sections 15 (a)–1 and (a)–2, of the act. The claim was that in violation of Section 7 (a),[1] it had employed certain of its employees for work weeks longer than 42 hours, and

[1] SEC. 7. (a) "No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

"(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

"(2) for a workweek longer than forty-two hours during the second year from such date, or

"(3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

had failed to compensate them, for overtime, at rates not less than one and one-half times the regular rates, at which they were employed. The defenses were: a denial that defendant was subject to the act; a general denial; and an affirmative claim that in order to conform with the act while continuing the pay its employees a fixed weekly salary, as it had been doing before the effective date of the act, defendant, by agreement with them, had provided for a basic rate of pay; for payment of overtime work performed in each week at a rate not less than one and one-half times such basic rate of pay; and for a guarantee that the aggregate pay each week for regular work and overtime work performed would amount to not less than a certain, definite fixed sum.[2] A great deal of testimony was taken, some on the jurisdictional point, but most of it on the merits.

On the jurisdictional point, the testimony was sufficient to support the finding that defendant, as to the employees in question, was subject to the act. On the merits, it all came down to this, that the defendant had made with each of its employees, an actual bona fide contract of employment, stipulating a basic hourly rate of pay, providing for payment for overtime work performed, at a rate of not less than one and one-half times such basic rate of pay, with a guarantee that the aggregate pay for regular and overtime work performed would amount each week to not less than a certain, definite sum fixed in the employment contract; that instead, for the purpose "of overtime payment, of taking as the regular rate at which he is employed," the rate contended for by plaintiff, a rate arrived at by dividing the weekly salaries of each employee, by the total number of hours worked each week, the defendant took as to each employee, the regular hourly rate stipulated in his contract of employment; that this rate in all cases, was above and in most, far above, the minimum rate required by the statute; and that on the basis of this rate, defendant had each week paid at least, in some weeks more, and in other weeks much more, than time and a half for overtime.

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[2] As set out in its answer, this was its defense. "At and prior to the effective date of the Fair Labor Standards Act of 1938, defendant was paying its employees on a weekly salary basis. With the possible exception of a few office boys, it was paying each of such employees as much or more than the minimum wages prescribed by said Act. Defendant considered it to the best interests of itself and its employees to continue paying on such basis insofar as it could do so in conformity with said Act. Defendant gave due consideration to said Act with the purpose of conforming fully to its requirements irrespective of the question of its constitutionality and of its applicability to defendant or to its employees. With this end in view, defendant established a basic rate of pay for each of its employees with provision for payment for overtime work performed at a rate of not less than one and one half times such basic rate of pay and with a guarantee that aggregate pay each week for regular work and for overtime work performed would amount to not less than a certain definite fixed sum. This arrangement was consummated by contract between defendant and each of its employees; it has been adhered to since the effective date of said Act; it is satisfactory to defendant * * * and insofar as defendant knows * * * it is satisfactory to each and all of defendant's employees."

The district judge of the opinion[3] that nothing in the statute was intended to or did prevent defendant and its employees from contracting with each other as to the regular rate at which each employee was to be employed so long as this rate was not below the minimum fixed by statute, and the employee was paid at least one and a half times that regular rate for overtime hours worked each week; that the law and the facts were with defendant and against plaintiff; and that the action had failed for want of equity; entered a judgment dismissing it.

Plaintiff is here urging upon us that its Interpretative Bulletin, No. 4, Maximum Hours and Overtime Compensation on Salaried Employees,[4] and the opinion of its general counsel,[5] set out therein, must be accepted as a proper interpretation of the meaning and application to the facts of this case, of the statutory provi-

[3] Fleming v. Below, 36 Fed. Supp. 907.

[4] "If the employee is on a weekly salary basis, his regular hourly rate of pay, on which time and a half must be paid, is computed by dividing the salary by the regular number of hours worked or if no regular number of hours is worked, by the total number of hours worked each week. If the employee works a regular number of hours, the regular hourly rate of pay will be a fixed rate, remaining unchanged from week to week. But if the employee works a fluctuating and not a regular number of hours, his regular hourly rate of pay will be the average hourly rate for the week and will vary from week to week."

[5] Sec. 18. "Section 7 of the Act requires that overtime must be paid at the rate of time and one-half the 'regular rate' of pay at which the employee is employed. Time and a half must, therefore, be paid upon the rate at which the employee is actually employed and paid and not upon a fictitious rate which the employer adopts solely for bookkeeping purposes. An examination of the methods suggested by employers as a means of continuing to work overtime hours without any increased wage bill will demonstrate the illegality of adopting a bookkeeping rate for purposes of the Wage and Hour Law and a different rate for any other purpose. Resorting to these methods will constitute a violation of Section 7 and will subject the employer to the penalties prescribed in the Act.

"1. Salaried Employees.—19. It is clear that an employer will violate the Act if he simply pays no attention to its requirements next October 24 but continues to work his employees the same number of hours (in excess of 42) they now work for the same salary they now receive. In our opinion an employer who will continue to work his employees in excess of 42 hours after October 24 for the same salary they now receive but who takes the trouble to manipulate the rates of pay in order to adopt a rate upon which he may calculate the time and a half, without incurring any additional labor cost, stands in no better position than the employer who simply and frankly disregards the overtime requirements of the Act.

20. "Employers have proposed two principal methods of avoiding overtime payment to salaried employees. The employer, by one plan, will announce that henceforth the employee is employed either at the rate of 30 cents an hour or at an hourly rate in excess of the minimum. But each week the employer will pay the employee a 'bonus' to make up the fixed salary. Obviously, the employee will not actually be paid at the rate adopted by the employer for overtime calculation. His regular rate of pay for overtime purposes must be based on the total weekly earnings including the bonus.

21. "The employer eliminates the 'bonus' feature in the second method. If the employee works an irregular number of hours the employer proposes to adopt a different rate each week upon which to compute overtime. Each week the employee's earnings, on the basis of the adopted rate for 42 hours and time and a half such rate for the excess hours, will equal or approximately equal the fixed salary. Thus, for example, if an employee, during the course of a month, works 43, 46, 52, and 48 hours, respectively, the employer, to continue paying him $21 weekly, will adopt 48 cents, 44 cents, 37 cents, and 41 cents as the respective rates of pay. Obviously, these rates are pure bookkeeping figures and the regular rate of pay on which overtime must be paid will be determined by dividing the $21 weekly salary by the hours worked each week.

22. "If the employee works a regular number of hours, the employer proposes to adopt a rate, which for 42 hours and at time and a half such rate for the hours in excess of 42, will yield the present earnings. The fact that the computations on the adopted rate will produce a figure equal to the employee's present total compensation cannot obscure the real situation. This employer will be in no better position than the employer who proposes to adopt the minimum wage as the overtime rate with a 'bonus' scheme, or to juggle the rates from week to week. This employer seeks to adopt one rate for overtime purposes, but will expressly or impliedly guarantee his employees another—based upon the weekly salary. The regular rate of pay on which overtime must be based will be determined by dividing the weekly salary by the regular number of hours worked."

sion that overtime must be compensated "at a rate not less than one and one-half times the regular rate at which he is employed," and insisting that the findings and judgment of the trial court do violence to the statute, and may not stand.

Equity Rule 52 provides that "findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given the opportunity of the trial court to judge of the credibility of the witnesses." Upon a full disclosure, and upon a record, which not only does not show them to be clearly erroneous but lends the support of undisputed testimony to the findings, the district judge found that the contracts between employer and employee were actual bona fide contracts of employment; that they were intended to, and did, really fix the regular rates at which each employee was employed; and that as made and carried out, they compensated the employees at a regular rate considerably in excess of the minimum fixed by the statute, and for overtime at a rate not less than one and one-half times that regular rate. While, then, the meaning of the statute must be drawn as a conclusion of law from its language as a whole, the question of its application to the facts in this case must be examined by us from the standpoint of those findings, and not from the standpoint of appellant's assumptions, that the arrangements, made between employer and employee, were not real contracts for employment, but were fictitious and unreal, a mere sham and pretense behind which appellee masked, to stalk and defeat the statute and its purpose.

Examined in the light of the district judge's findings, we think it may not be doubted that the district judge was right in his conclusion that what appellee and its employees did was not a violation but a carrying out both of the letter and the purpose of the statute, as that purpose is expressed in the language it employs.

Appellant recognizes that the payments made to the employees are not, as absolutes, in question here, as substandard wages; that if appellee had changed the form of its employment contracts to conform to appellant's view, it could have paid its employees considerably less than it did, and still have been within the law; that the minimum wage provisions of the act are not involved; and that appellee's labor policies are not in issue. It has brought this case, and has stood throughout, upon the bold proposition,*

* As stated in the brief, "the regular rate of pay as used in Sec. 7 means the employee's fixed weekly wage translated into its hourly equivalent, that is, the total fixed weekly compensation which the employee is actually paid, divided by the total number of hours actually worked by the employee during the work week, the term 'regular rate' is used in contradistinction to overtime rate.

"The regular rate is primarily the employee's rate of actual earnings, the money he actually received in relation to the amount of time he actually works. In a case such as the one at bar, where the employee is paid a fixed weekly salary without regard to the number of hours he works each week, the regular rate for each work-week is the hourly equivalent of the fixed weekly salary . . . On the facts of this case it cannot be said that the fixed weekly salary included overtime compensation because as a matter of fact the full salary was earned by the employee when no overtime was worked."

that where weekly salaries are paid, no matter how large the salary or how it was arrived at or agreed to, the "regular rate" referred to in the statute must always, and can only, be determined by dividing the weekly compensation by the total number of hours the employee actually works during each workweek, and employer and employee cannot contract otherwise.

Appellant does not support this position by pointing to words in the act which purport to prohibit agreements, as here, between employer and employee fixing "the regular rate at which he is employed," and agreeing to pay, for overtime, at a rate more than one and one-half times the regular rate fixed by the agreement. Nor does he support it, by pointing to provisions in the act, in any wise limiting the amount of overtime that may be worked and paid for. Of course, he cannot do this since the act contains absolutely none, and in his Interpretative Bulletin No. 4, he has declared: "It is clear that there is no absolute limitation upon the number of hours that an employee may work. If he is paid time and one-half for overtime, he may work as many hours a week as he and his employer see fit." His only support for his position that the act has this effect, is the claim that the general purpose of the act as expressed in Section 2, shows that it was designed and drawn to penalize and limit overtime. His only attack upon the agreement is, that thereby defendant has been enabled to continue to pay, without increasing it, the same compensation he paid before the act. His insistence is that the act must be construed and applied as he contends for, and defendant must be required to pay more than it agreed to pay and its employees agreed to receive, because the pay which by the agreement was fixed to cover both regular and overtime, must, under that construction, be considered as covering only regular time, and for the overtime worked, there must be additional compensation.

We cannot agree with appellant that the statutory words under consideration, "regular rate at which he is employed," are at all ambiguous, or that for their construction they require resort to the declaration of policy and the legislative history of the act. We think it clear that their meaning is plain and simple and their application equally so. In cases where there is no express agreement as to the regular rate at which the employee is employed, but only an agreement for a weekly wage, appellant's method of arriving at the regular rate by assuming that the wage stipulated for is not intended to cover overtime worked, would, we think, be unexceptionable. But in cases where, as here, the contract of employment fixes the regular rate, that method will not do, for here within the very words of the statute, "the regular rate at which he is employed," is fixed as to each employee in his contract of employment.

But, if we could agree with appellant, that the words of the act are ambiguous and that for its construction, resort to the purpose clause and the legislative history of the act is necessary or proper, we can find nothing in either to support appellant's view. Section 2 deals with doing away with a substandard, and the establishment and maintenance of a minimum standard, of living. It says nothing about spreading the work or reducing hours of working. Section 3 declares it to be the policy of the act, through the exercise by Congress of its power to regulate commerce, "to correct, and as rapidly as possible, to eliminate substandard conditions of employment, without substantially curtailing employment or earning power." Section 5 provides for industry committees whose business shall be to make the recommendations provided for in Section 8. Section 6 provides for minimum hourly wages. Section 7, the section in question, does not at all fix maximum hours, it merely provides what shall be the maximum weekly hours, during which an employee may work at the regular rate at which he is employed, and that, except where as the result of collective bargaining, employer and employee otherwise agree, for every hour over, that he works, he shall be compensated at a rate, not less than one and one-half times the regular rate. Section 8, the section which implements the policy section of the act, provides in Sec. (a), "with a view to carrying out the policy of this act by reaching as rapidly as is economically feasible, without substantially curtailing employment, the objective of a universal wage of 40 cents an hour in each industry engaged in commerce or in the production of goods for commerce * * * the Administrator shall from time to time convene the industry committee for each industry * * * and it shall from time to time recommend the minimum rate of wages to be paid under Section 6."

If then, we are, as appellant contends, to find the meaning of the act, its prohibitions and commands, not in the language of its implementing clauses, which the Congress has chosen to express that meaning, but in the general purpose, thought to animate it, the title of the act, "Fair Labor Standards Act," the complete absence from the act of any prohibition against or limitation upon working extra hours, any prohibition against or limitation upon the making of agreements by employers with their employees, the expressions in Section 2, and particularly the provisions of Section 8, would compel us to conclude, that the purpose of the act is to establish and gradually raise minimum wages, that the overtime provisions in it are inserted not at all to discourage or limit overtime work but as a part of the scheme to raise substandard wages by providing a definite pay for overtime work when such work is required; and that nothing in it purports to or does at all impair the right of employer and employee to contract as they have done here.

When we turn to the legislative history of the act, appellant stands no better. For, there is no reference in the whole legislative history to prohibiting agreements between employer and employee, as here, for all inclusive and regular weekly salaries, none whatever to the effect that it was intended that persons already paying more than the minimum wage the act provided should be compelled to pay still more. The legislative history of the act, while showing as the legislative history of all new and controversial acts does some individual differences of opinion, adds up to showing, as to the overtime provisions, only what the act shows, that in broad outline the Congress intended that for overtime work, time and one-half the regular rate of pay at which each was employed, should be paid each employee. How that regular rate should be arrived at, when it was fixed above the minimum, was not, for all that appears in the briefs of the parties, and we have not otherwise had access to the debates or committee reports, dealt with in the debates on the bill, either in the original passage of it, or in amendments offered to it, except to say that wages above the minimum must be left to bargaining between employee and employer.[7] When all is said and done, appellant comes in his argument to this point; that the law should be construed as he contends for, because in the opinion of the administrator, the law would better serve its purpose if it were drawn that way. Appellant overlooks the fact that a legislative act in the United States is not as in some countries, a mere general outline by a party or group in power, of the purposes it wishes to accomplish, to be expanded implemented and given effect by its administrators, in accordance with the general purposes of its proponents. A fundamental fact in American political life, has always been that in the struggle here for laws as means, to make law as liberator effective, there have always been differing opinions as to the wisdom, propriety and scope of proposed new and controversial laws, and that laws as finally enacted here, are usually the result of a compromise or at least of an adjustment of these conflicting views.

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[7] For instance, Senator Black, Congressional Record, Vol. 81, p. 7808, July 29, 1937:
"The Committee was of the opinion that it was not wise for the Federal Government to attempt to fix wages in this country above the minimum. The Committee was of the opinion that that should be left to bargaining between the employees and the employers, and that the jurisdiction should be left at that point—simply to provide a minimum wage."
And Senator Borah, Vol. 83, p. 9175, June 14, 1938:
"We are not dealing here with anything except minimum wages, and those in my opinion are fixed upon one genuine principle and that is the amount of wages necessary to maintain a family and build up and to maintain the citizenship of the country. That is all we are dealing with."

* * * * *

"Congress has no authority to deal with other wages. All wage earners have a constitutional right to bargain for whatever wage they choose. The Federal Government only has authority to deal with minimum wages because minimum wages and hours of employment relate to the health and general welfare of the citizens and it legislates in this field solely because it can be justified on humanitarian grounds. Both federal and state constitutions forbid the fixing of any wage by law other than the minimum."

Because this is and always has been so, it can be usually said of our laws, that the general, not the partial or partisan will, speaks in them. It is because this is so, that canons of statutory interpretation and construction require that statutes must be construed and give effect, in accordance with the language chosen for the expression, of this compromise and adjustment of views, and not in accordance with purposes or views, of either the proponents or the opponents of the legislation, which have not been given expression in the statute.

The issue presented here by the claim of the appellant that though the statute does not say so, it must be construed to give full effect to the purpose of placing him as administrator of the act in a tutelary position, the employer and employee in a state of tutelage to him, so that they no longer have a right to fix their wages by agreement, but must fix them according to the legalistic interpretative formulas of the administrator's general counsel, brings this into sharpest focus. It may be admitted that there is a section of opinion in this country and in the Congress, sufficiently collectivistic to prefer the tutelary system for which the administrator contends, and that if they had had sufficient voting power, they would have so provided in the law. It must be conceded, however, on the other hand, that there is another section of opinion both in the nation and in the Congress, which is not so collectivistic and still believes in reasonable freedom of contract. It is just because of this fact legislation is compromise, that the views of the proponents and of the opponents, as to the purposes and effect of the legislative act, are never regarded as of value in a construction of it, and that it is settled law that statutes must be construed in accordance with the intent of the legislature as expressed in the language of the act as a whole. Its meaning may not be sought by the courts in the vague penumbrae of the wishes and desires of its proponents or its opponents as these are expressed in debates. Particularly, may it not be sought in the purely legal interpretation by the administrator's legal staff, for if this were so, the administrator would find himself, not only in the powerful position he properly stands in, of administrator for the Congress of one of its laws, and plaintiff bringing suit in the name and power of the United States to enforce the law, but, by issuing a binding interpretation of it before he brings his suit, in the position of a judge in his own cause who has written his decision before hand.

For us to agree that such interpretations are binding on us would require us to entertain the view, the contrary of that uniformly taken both by Congress and the courts, that law as well as fact, should be and has been delegated to the administrator.

The authorities appellant cites[8] in support of his view that the administrator's interpretation should be followed here, do not, we think, at all support him. In the Trucking Company case, the majority clearly states the applicable rule, "There is of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves, to determine the purpose of the legislation. When that meaning has led to absurd or futile results, however, this court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this court has followed that purpose, rather than the literal words * * * The interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function. This duty requires one body of public servants, the judges, to construe the meaning of what another body, the legislators, has said. The interpretation given weight there was the settled practice of the I. C. C., as to its jurisdiction under the Motor Carrier Act, both before and after the enactment of the Wage and Hour Act. It was not, as here, the purely legal opinion of the administrator's counsel nor was it an interpretation which would abrogate the right of contract, to substitute an arbitrary, for a conventional method of arriving at the regular rate at which each employee is employed.

It is true, that as quoted in appellant's brief, the opinion did say at page 549, that "contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parties work efficiently and smoothly while they were yet untried and new," was entitled to great weight. But this was a quotation from the opinion of the Supreme Court in Norwegian Nitrogen Company v. U. S., 288 U. S. 294 at 315, a reference to that case and the authorities it cites, makes it entirely clear that the court was not intending at all to depart from the established rule; that where a statute is ambiguous or uncertain, the practical interpretation by the Executive Department charged with its administration, is entitled to the highest respect and if acted upon for a number of years, will not be disturbed except for very cogent reasons. U. S. v. Moore, 95 U. S. 760; Logan v. Davis, 233 U. S. 627; Brewster v. Gage, 280 U. S. 326; Fawcus Machine Co. v. U. S., 282 U. S. 378; I. C. C. v. New York, N. H. & S. RR. Co., 287 U. S. at 190. It was certainly not intended thereby to announce the new and heretical doctrine put forward

[8] United States v. American Trucking Co., 310 U. S. 534; United States v. Darby, 312 U. S. 100.

by the administrator, that the newer the statute, and the more recent the legal interpretation of it by the administrator's counsel, the more binding that interpretation on the courts.'

The Darby case is not authority for, it is authority against, appellant's contention that the purpose of the act was to spread the work by discouraging and penalizing overtime work and pay. In the Darby case, the Supreme Court said of the act that the motive and purpose was "plainly to make effective the Congressional conception of public policy that interstate commerce should not be made the instrument for competition in the distribution of goods produced under substandard labor conditions," and again at page 122, "As we have said the evils aimed at by the Act are the spread of substandard labor conditions through the use of the facilities of interstate commerce for competition by the goods as produced with those produced under the prescribed or better labor conditions," and again on page 125, "Both provisions are minimum wage requirements compelling the payment of a minimum standard wage with a prescribed increased wage for overtime of 'not less than one and one-half times the regular rate' at which the worker is employed." There is nothing here about spreading the work, nothing about penalizing overtime, nothing about abrogating the right of contract, nothing about requiring an employer to further raise wages already far above the substandard struck down and the minimum standard set up in the act.

Freedom of contract, within constitutionally valid limitations, is, in the United States of America, one of the fundamental freedoms and this particularly so in regard to labor relations. When, then, it is contended as here, that a statute has cut off or limited this freedom, a litigant must point to something more than his opinion that it ought to be cut off or limited, must point to language clearly and validly so providing. There is no more authoritative principle in the field of labor law than that—subject, of course, to valid statutes designed to prohibit substandard conditions and unfair labor practices—wages, hours, and work conditions are the proper subject of contract between employer and employee and their agreements must be, and are, given full effect in the courts.'

Here it is undisputed and found by the court that, desiring to maintain and continue a system of fixed and regular weekly salaries in strict and full compliance with the Fair Labor Standards Act, employer and employees freely and voluntarily entered into agreements having that effect. These agreements fixed the regular

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' "It is Burnbook law that the relation of master and servant is contractual. 18 R. C. L. Section 1 to 7; pp. 490 to 496. "Ordinarily a special contract fixing the terms and conditions on which one party shall serve another is, in the absence of proof altering or rescinding it, conclusive." Id. Sec. 6, Contracts, Vol. 6, page 692, et seq. Collective bargaining grounds on these principles. System Federation No. 59 v. L. & A. R. R. Co., — Fed. (2d) —; and cases cited therein. Y. & M. V. R. R. v. Webb, 64 Fed. (2d) 902. Rentschler v. Mopac R. R., 95 A. L. R., 1, and note.

rate of pay at which each was employed at a figure considerably above the minimum standard wage the statute fixes; provided for weekly compensation large enough to pay at least one and one-half times that regular rate for any overtime which he might be required to work each week; and based upon experience over the years, guaranteed a weekly salary to each employee in an amount which would, in some weeks, be more, in none less than would be due them, at that rate, for the regular and the overtime hours worked in any week.

A great deal of the record and of the briefs of the parties is devoted to a showing on the part of appellee that by its system it, from the beginning, paid each employee more than he would be paid under the system which appellant wishes it to adopt, and by raises given since it has paid and is paying each still more, and, on appellant's part, that by its system it pays them less than appellant's ruling would provide.

But all of this is entirely beside the mark. Whether Congress could constitutionally fix a minimum wage and then compel employers, wishing to provide for fixed weekly salaries, to pay a wage higher than the minimum so fixed, might raise a serious constitutional question. That question is not before us, for nothing in the act purports to make this requirement of an employer. Appellant does not so contend. His contention, stripped of all irrelevancies and confusions, really comes down, under the controlling law, to a contention of fact; that the testimony of the employer and its employees that they have agreed, as they testified they did, is false; that there was no agreement; that there was mere bookkeeping to give the appearance of reality to an arrangement fictitious in fact and a fraud upon the act. But in what the fiction or the fraud consists, except that the agreement is not in accord with appellant's views as to the purpose of the act, is not made to appear. It may be that Congress could validly, and should have, written a provision into the law forbidding contracts such as those made here, but that is a question for Congress, not for the administrator or the courts. It certainly was not the question the employer and employee were confronted with when they made their agreements. That was not the question the district judge dealt with. It is not the question with which we have to deal. All the district judge was asked to and did decide was whether the parties made the agreement they claimed to have made and whether they could, in law, make such an agreement. We think it perfectly clear that the finding that they could, and did, is supported in fact and in law, and that the judgment should be affirmed.

Affirmed.

SIBLEY, Circuit Judge, Concurring.

I concur in the philosophy and the conclusions of Judge Hutcheson's opinion. I wish only to emphasize that the wage agreements before us are actual deliberate contracts intelligently made, and not mere bookkeeping or a scheme to evade the Fair Labor Standards Act. They are made mainly with the editors and reporters and those who assist them in producing a daily newspaper. The employees in the mechanical departments have union agreements not here involved. The time that editors and news gatherers must work is necessarily very variable and unpredictable. When things are quiet, a few hours a day may suffice. In times of news activity a twelve-hour day may be required. It is practically difficult to make a fair working agreement based on hours worked. The agreements here in question are similar in form and recite the requirements of the law as to minimum wages, maximum hours, and overtime pay, and conclude thus: "In order to conform our employment arrangements to the scheme of the Act your basic rate of pay will be 75 cents per hour for the maximum number of hours each week as specified by the Act, and that for time over the maximum number of hours specified you will receive for each hour of work not less than one and one-half time such basic rate above mentioned, with a guaranty on our part that you shall receive weekly for regular time and such overtime as the necessities of the business may demand a sum not less than $45.00." The proposal was accepted in writing by each such employee. The contract follows exactly what the Act requires, except for the guaranty of a minimum weekly total. That guaranty is for the protection and benefit of the employee, the needs for whose living are constant whether his weekly work is or not. It enables him to know that he will have at least the guaranteed sum to live on no matter how slack his work may prove. This helps to maintain a decent standard of living which is the main purpose of the Act. It is not forbidden by the Act. When the guaranty is made in good faith in the exercise of the right of free contract, it does not spoil the other terms of the contract and result in unintended liabilities that are inconsistent with the contract.

I am authorized to say that Judges Foster and Hutcheson concur in this additional statement.

A true copy:
Teste.

Judgment

Extract from the Minutes of June 27th, 1941

No. 9867

PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR

vs.

A. H. BELO CORPORATION

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Texas, and was argued by counsel;

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

SIBLEY, Circuit Judge, concurs.

Clerk's Certificate

United States of America,

United States Circuit Court of Appeals, Fifth Circuit

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 485 to 504 next preceding this certificate contain full, true, and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 9867, wherein Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, is appellant, and A. H. Belo Corporation is appellee, as full, true, and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 484 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 27th day of August, A. D. 1941.

OAKLEY F. DODD,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1941

Supreme Court of the United States

Order allowing certiorari

Filed October 27, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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FILED
SEP. 16 1941

No. 622

In the Supreme Court of the United States

OCTOBER TERM, 1941

PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

A. H. BELO CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. ——

PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

A. H. BELO CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered on June 27, 1941, affirming the judgment of the United States District Court for the Northern District of Texas, Dallas Division, dated February 4, 1941, and filed February 19, 1941, which dismissed the cause with prejudice.

OPINIONS BELOW

The opinion of the district court (R. 185–189) is reported in 36 F. Supp. 907. The opinion of the circuit court of appeals (R. 485–496) is reported in 121 F. (2d) 207.

JURISDICTION

The judgment of the circuit court of appeals was entered on June 27, 1941 (R. 497). The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The respondent, in anticipation of the Fair Labor Standards Act, made agreements with each of its employees setting out a basic hourly rate of pay, but with a guaranty, for irregular work weeks which included varying amounts of overtime, of a fixed weekly salary equal to his prior salary. The specified hourly rate was determined by dividing the employee's weekly salary by 60. The question is whether the arbitrary rate of pay specified in the agreement is the "regular rate of pay" upon which overtime compensation is to be computed under section 7 of the Act.

STATUTE INVOLVED

The relevant provisions of the Fair Labor Standards Act are set forth in the Appendix.

STATEMENT

Since a date prior to October 24, 1938, the effective date of the Fair Labor Standards Act of 1938, the respondent has been engaged at Dallas, Texas, in the publication of a daily newspaper, *The Dallas Morning News*, with a circulation of over 100,000 (R. 378), and the operation of a 50,000-watt radio station, WFAA, licensed by the Federal Communications Commission (R. 371–372). Until December 31, 1940, respondent also published the *Semi-Weekly Farm News*, with a circulation of about 100,000 (R. 379). More than 1,800 copies of the *Morning News* are shipped daily in interstate commerce (R. 378–379), and about 24,000 copies of each issue of the *Farm News* were shipped in interstate commerce (R. 379). Respondent is a member of the Associated Press (R. 373) and receives the services of the United Press (R. 373, 375). With a few exceptions the same employees were engaged in putting out the two publications (R. 382).

The total number of employees in respondent's publishing plant and radio station is about 600 (R. 7, 82). Before October 22, 1938, most of its employees received fixed weekly salaries, regardless of the number of hours worked a week (R. 9, 82–83). There was no regular schedule of hours, but the general authorized maximum was 48 hours a week for men and 44 hours for women (R. 63–64).

On October 22, 1938, the respondent, in anticipation of the Fair Labor Standards Act (R. 9, 46, 85–88), issued to each of its salaried employees a printed notice (R. 467–473) containing a paragraph in the following form:

> In order to conform our employment arrangements to the scheme of the Act without reducing the amount of money which you receive each week, we advise that from and after October 24, 1938, your basic rate of pay will be * * * 67 * * * cents per hour for the first forty-four hours each week, and that for time over forty-four hours each week you will receive for each hour of work not less than one and one-half time such basic rate above mentioned, with a guaranty on our part that you shall receive weekly, for regular time and for such overtime as the necessities of the business may demand, a sum not less than $40.00.

The individual notices varied only as to the name of the employee, the amount of the "basic rate," and the amount of the weekly "guaranty" (R. 467). They were signed by the employees to whom they were addressed and returned to the respondent (R. 470). In these notices the employer arrived at the employee's "basic" hourly rate by dividing the existing weekly wage by an arbitrary divisor, generally 60 (R. 62, 88–89), and the amount of the weekly salary before October 22, 1938, was stated as the weekly "guaranty" (R. 86). Under this arrangement an employee

could work as much as 54½ hours a week during the first year after the effective date of the Act without any compensation in addition to his weekly salary; during the second year, 54 hours; and, after October 24, 1940, 53⅓ hours (R. 89, 131–132, 390).

After October 22, 1938, respondent's employees continued to work as before a number of hours varying from week to week but the median figure was about 48 hours for men and 44 hours for women, and the employees received the same weekly salaries. In most weeks the statutory maximum hours were exceeded. (R. 194–309, 310–337.)[1] In only a very few cases did employees who worked hours in excess of the statutory maximum receive compensation in addition to their weekly salaries, and then only when they worked more than 54½, 54, or 53⅓ hours (R. 273, 276, 314–315, 319, 326–327, 328, 332, 334, 336–337).

On August 12, 1940, the petitioner filed a complaint (R. 1–5) for an injunction under section 17 of the Fair Labor Standards Act, alleging that the respondent had violated sections 7 (a) (1), 7 (a) (2), and 15 (a) (2) of the Act by failing to compensate its employees for hours in excess of the statutory maximum workweeks at rates not less than one and one-half times the regular rates at which they were employed. The complaint

[1] If an employee received an increase in weekly pay, he signed a new notice with a new "basic" rate and a new weekly "guaranty." In a number of instances the new notice was signed two months or more after the actual raise in pay (R. 54, 195, 313, 472).

also alleged violations of section 15 (a) (1) of the Act in transporting, shipping, delivering, and selling in interstate commerce goods in the production of which employees were employed in violation of Section 7. The respondent's answer (R. 7–22) denied that respondent was subject to the Act or had violated the Act. It also denied the constitutionality of the Act if applicable to respondent and its employees and claimed exemption from sections 6 and 7 by virtue of the exemption in section 13 of "retail or service" establishments.

The district court found and ruled that the respondent was subject to the Fair Labor Standards Act but had not violated it (R. 185–189), and dismissed the complaint (R. 457). On appeal the circuit court of appeals affirmed (R. 497).

REASONS FOR GRANTING THE WRIT

1. The Administrator of the Wage and Hour Division has consistently interpreted section 7 as a regulation of hours which attaches to each overtime hour a penalty in the form of one-half the employee's "regular rate." Accordingly, he has construed the term "regular rate" to mean the rate obtained for each week by averaging the weekly wage over the number of hours worked.[2]

[2] This method of determining the "regular rate" is set out in paragraphs 6 to 14, inclusive, of Interpretative Bulletin No. 4 of the United States Department of Labor, Wage and Hour Division (R. 396–401).

The "regular rate" of an employee paid a fixed weekly wage for an indefinite number of hours would be obtained for each week by dividing the amount of the wage by the number of hours worked.

The court below, on the other hand, ruled that the employer and the employee may by contract establish an arbitrary figure as "the regular rate at which he is employed," so long only as that figure is above the minimum wage fixed by the statute. The decision seems to rest upon the basic proposition that section 7 was designed to regulate minimum wages and not maximum hours (R. 490–491, 494). But both the wording of the section and the evidence of congressional purpose[3] show that the object of section 7 was to afford an inducement to observe maximum hours. This Court in *United States* v. *Darby,* 312 U. S. 100, 125, held that section 7 is within the legislative power to fix maximum hours, and in *Bunting* v. *Oregon,* 243 U. S. 426, upheld a similar state statute as a regulation of maximum hours and not of wages.

A collateral ground of the decision below was that Congress must be supposed to have intended to leave respondent and its employees free to contract as they chose as to the wage rates upon which overtime compensation is to be based. (R. 489–

[3] See S. Rpt. No. 884, 75th Cong., 1st Sess., p. 4; H. Rpt. No. 1452, 75th Cong., 1st Sess., pp. 7, 9; 81 Cong. Rec. 7804, 7807, 7871, 7938, 7941, 8345–8346; 82 Cong. Rec. 1391, 1395, 1401, 1415, 1470, 1480, 1486, 1490, 1505, 1601, 1672, 1696.

491, 494). But from *Holden* v. *Hardy*, 169 U. S. 366, to *United States* v. *Darby*, 312 U. S. 100 (1941), this Court has consistently ruled that private agreements inconsistent with statutes regulating employment relations must yield to the broader public policy of those statutes.[4]

The court below relied upon the *bona fides* of the contracts between the respondent and its employees (R. 486, 488, 495). But whether the contracts be *bona fide* or procured by fraud or duress, the issue under section 7 is whether the hourly rate set out in the contract is actually the "regular rate at which the employee is employed."

2. The decision below is in conflict with the decisions of numerous district courts and of state courts[5] which have held that an employee's "regular rate" is his hourly rate of earnings determined from the facts of hours worked and wages

[4] It is, of course, familiar learning that a laborer may not contract away the protection of a remedial statute. *United States* v. *Morley Const. Co.*, 98 F. (2d) 781, 788 (C. C. A. 2d, 1938); *National Labor Relations Board* v. *American P. & C. Corp.*, 113 F. (2d) 232 (C. C. A. 9th, 1940); *Waterman S. S. Corporation* v. *Labor Board*, 119 F. (2d) 760 (C. C. A. 5th); *Larsen* v. *Rice*, 171 Pac. 1037 (Wash., 1918); *Montgomery Ward & Co.* v. *Lusk*, 52 S. W. (2d) 1110 (Texas Civ. App., 1932); *City of Glendale* v. *Coquat*, 52 P. (2d) 1178 (Arizona, 1935); *Goebel* v. *Elliott*, 35 P. (2d) 44 (Wash., 1934); *Short* v. *Bullion-Beck & Champion Min. Co.*, 57 Pac. 720 (Utah, 1899); *Cato* v. *Grendel Cotton Mills*, 129 S. E. 203 (S. C., 1925); *Groves* v. *Adelman*, 4 Wage Hour Rept. 274 (Munic. Ct. D. C. Feb. 28, 1941).

[5] Actions under Section 16 (b) of the Act have been brought by employees in the state as well as federal courts.

paid.[6] A number of courts have expressly held that the provisions of section 7 may not be modified or evaded by contract.[7] On the other hand, three decisions of district courts are in apparent

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[6] *St. John* v. *Brown*, 38 F. Supp. 385 (N. D. Tex.); *Abadie* v. *Cudahy Packing Co. of Louisiana*, 37 F. Supp. 164 (E. D. La.); *Emerson* v. *Mary Lincoln Candies*, 20 N. Y. S. (2d) 570 (Sup. Ct. Erie Co., 1940), affirmed 261 App. Div. 879 (now on appeal to New York Court of Appeals); *Haddad* v. *Beckerman Shoe Corp.*, 4 Wage Hour Rept. 329 (Ct. Comm. Pleas, Berks Co., Pa., May 5, 1941); *Angel* v. *Dayton Veneer & Lumber Mills*, 1 Labor Service, 11,979 (M. D. Ga., June 9, 1941) (Prentice-Hall); *Boylan* v. *Liden Mfg. Co.*, 4 Wage Hour Rept. 158 (C. C. Mich., Ingham Co., Feb. 25, 1941); *Floyd* v. *DuBois Soap Co.*, 4 Wage Hour Rept. 77 (Ct. Comm. Pleas, Hamilton Co., Ohio, Feb. 6, 1941); *Moss* v. *Postal Telegraph-Cable Co.*, 4 Wage Hour Rept. 291 (M. D. Ga., May 16, 1941); *Muldowney* v. *Seaberg Elevator Co.*, 39 F. Supp. 275 (E. D. N. Y.); *Hargrave* v. *Mid-Continent Petroleum Corp.*, 4 Wage Hour Rept. 352 (E. D. Okla., June 19, 1941); *Reck* v. *Zarnocay*, 4 Wage Hour Rept. 305 (Sup. Ct. N. Y., N. Y. Co., June 3, 1941); *McMillan* v. *Wilson & Co., Inc.*, 4 Wage Hour Rept. 409 (Minn., Ramsey Co., June 13, 1941); *Eichkorn* v. *Kilkenny*, 1 Labor Service, 11,542 (Ct. Comm. Pleas, Passaic Co., N. J., Dec. 21, 1939) (Prentice-Hall); *Thornberg* v. *Eastern T. & W. N. C. Motor Transportation Co.*, 3 Wage Hour Rept. 534 (Sup. Ct. Tenn., Nov. 25, 1940); *Wagner* v. *Field*, 4 Wage Hour Rept. 329 (Super Ct. Allen Co., Ind., May 19, 1941); *Fleming* v. *Pearson Hardwood Flooring Co.*, 39 F. Supp. 300 (E. D. Tenn.); *Klotz* v. *Ippolito*, 4 Wage Hour Rept. 444 (S. D. Tex., July 21, 1941); *Drake* v. *Hirsch*, 4 Wage Hour Rept. 446 (N. D. Ga., Aug. 8, 1941).

[7] *Fleming* v. *Carleton Screw Products Co.*, 37 F. Supp. 754 (D. Minn., now on appeal to the Circuit Court of Appeals for the Eighth Circuit); *McLendon* v. *Bewley Mills*, 4 Wage Hour Rept. 30 (N. D. Tex. Dec. 10, 1941); *Fleming* v. *Atlantic*, 4 Wage Hour Rept. 353 (N. D. Ga. June 25, 1941); *Williams* v. *General Mills, Inc.*, 4 Wage Hour Rept. 421 (N. D. Ohio, July 3, 1941).

agreement with the decision below.[8] It seems evident that, unless the conflict in decisions among the lower courts be resolved, there will continue to be litigation in large volume and with contradictory results.

3. If the decision below stands, most weekly salary arrangements can be converted by "contract" into arrangements for minimum or low basic hourly rates requiring no additional compensation for workweeks in which the statutory maximum is exceeded.[9] A number of contractual devices in all essentials the same as the one employed in this case have already been before the courts (see note 7, *supra*). It is estimated that more than a million and a half employees subject to the provisions of the Fair Labor Standards Act are directly or potentially affected by the availability of these contractual devices.[10]

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[8] *Missel* v. *Overnight Motor Transportation Co.*, 4 Wage Hour Rept. 419 (Md. 1941), now on appeal to the Circuit Court of Appeals for the Fourth Circuit; *Reeves* v. *Howard County Refining Co.*, 33 F. Supp. 90 (N. D. Tex. 1940); *Bumpus* v. *Continental Baking Co.* (W. D. Tenn., April 29, 1941), now on appeal to the Circuit Court of Appeals for the Sixth Circuit.

[9] Thus, for example, a guaranteed salary of $30 a week, regardless of the number of hours worked, may be divided by a figure as high as 100 without infringing the 30-cent minimum rate. If such practice were permissible under the Act, the employee could be required to work up to 80 hours a week [$12 (40 hours straight time × 30 cents) plus $18 (40 hours overtime × 45 cents) equals $30] without any compensation in addition to his guaranteed salary.

[10] In April 1939 nearly 2,400,000 of the employees subject to the Act were working more than the maximum hours,

During the enforcement of the Act by the Administrator of the Wage and Hour Division the question of the interpretation of section 7 and the meaning of "regular rate" arises more frequently than any other single question. Every case involving section 7 of the Act necessarily turns on the meaning of "regular rate at which he is employed." It is inevitable that, until this Court has passed on section 7, differences as to its interpretation and application will increase, and the rights of employees and employers alike will remain uncertain.

CONCLUSION

Wherefore, we respectfully submit that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Fifth Circuit should be granted.

CHARLES FAHY,
Acting Solicitor General.

GERARD D. REILLY,
Solicitor of Labor.

SEPTEMBER 1941.

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while the number receiving less than 30 cents an hour was estimated at under 700,000. First Annual Report of the Administrator of the Wage and Hour Division (1939), p. 36.

APPENDIX

Fair Labor Standards Act of 1938 (Act of June 25, 1938, 52 Stat. 1060; U. S. C., Supp. V, Title 29, Sec. 201 et seq.):

FINDING AND DECLARATION OF POLICY

SEC. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

MINIMUM WAGES

SEC. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—

(1) during the first year from the effective date of this section, not less than 25 cents an hour,

(2) during the next six years from such date, not less than 30 cents an hour,

(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 8, whichever is lower, and

(4) at any time after the effective date of this section, not less than the rate (not in excess of 40 cents an hour) prescribed in the applicable order of the Administrator issued under section 8.

(b) This section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of this Act.

MAXIMUM HOURS

SEC. 7. (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

* * * * *

(d) This section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of this Act.

PROHIBITED ACTS

SEC. 15. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Administrator issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common car-

rier from its obligation to accept any goods for transportation;

(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order or the Administrator issued under section 14;

* * * * *

RELATION TO OTHER LAWS

SEC. 18. No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act or a maximum workweek lower than the maximum workweek established under this Act, and no provision of this Act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act. No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.

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No. 622

In the Supreme Court of the United States

OCTOBER TERM, 1941

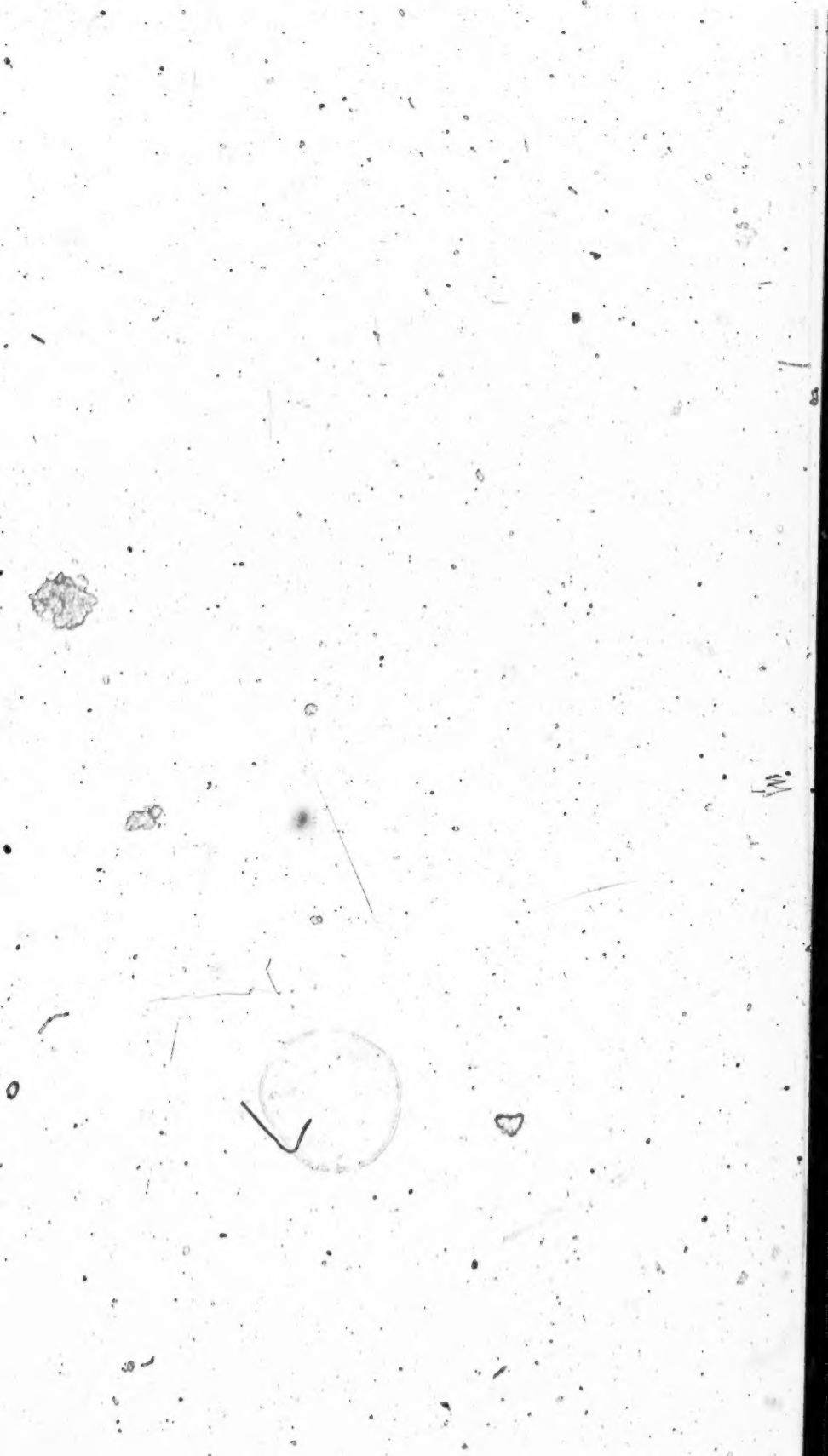
L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

A. H. BELO CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONER



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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 622

L. METCALFE WALLING,[1] ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

A. H. BELO CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the district court (R. 185–189) is reported in 36 F. Supp. 907. The opinion and concurring opinion in the circuit court of appeals (R. 485–496) are reported in 121 F. (2d) 207.

JURISDICTION

The judgment of the circuit court of appeals was entered on June 27, 1941 (R. 497). The petition

[1] L. Metcalfe Walling, the successor in office of Thomas W. Holland, was substituted for him on March 9, 1942, as the petitioner herein. Thomas W. Holland, in turn, was the successor in office of Philip B. Fleming, and was substituted for him on January 12, 1942.

for a writ of certiorari was filed on September 16, 1941, and granted on October 27, 1941 (R. 498). The jurisdiction of this Court rests on section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Prior to the enactment of the Fair Labor Standards Act the respondent paid its employees fixed weekly salaries. In anticipation of the Act, it made so-called agreements with each of its employees setting forth an hourly "basic rate of pay" (generally equal to one-sixtieth of the weekly salary), together with a guaranty that in any event the compensation would not be less than the prior weekly salary. The question is whether, in computing overtime compensation (at time and one-half), the arbitrary hourly rate specified in each employee's agreement is the "regular rate at which he is employed" under Section 7 of the Act.

STATUTE INVOLVED

Section 7 (a) of the Fair Labor Standards Act (52 Stat. 1060, 29 U. S. C., sec. 201 *et seq.*) provides as follows:

> SEC. 7. (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—
>
> (1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than *one and one-half times the regular rate at which he is employed.* [Italics supplied.]

The other relevant provisions of the Act are printed in Appendix A, *infra,* pp. 42–47.

STATEMENT

On August 12, 1940, the Administrator filed his complaint (R. 1–5) in the District Court for the Northern District of Texas pursuant to Section 17 of the Fair Labor Standards Act. The complaint alleged that respondent had violated Sections 7 and 15 (a) (2) by employing certain of its employees subject to the Act for workweeks in excess of the applicable statutory maximum without payment of overtime compensation required by the statute (R. 3). The complaint also alleged that respondent, in violation of Section 15 (a) (1), since October 24, 1938, had continuously shipped in interstate commerce goods produced under substandard labor conditions. The complaint prayed a judgment enjoining respondent from violating Sections 15 (a) (1) and 15 (a) (2) of the Act (R. 4). In its answer (R. 7–22), respondent denied the viola-

tions and affirmatively alleged compliance. It also denied that the Act did, or constitutionally could, apply to its business, and claimed exemption from the Act as a "retail or service establishment" within the meaning of Section 13 (a) (2).[2]

The District Court, after hearing, found that respondent's employees were covered by the Act but that there had been no violation (R. 185–190) and entered judgment dismissing the complaint (R. 457). The Circuit Court of Appeals affirmed (R. 497).

Apart from facts relevant to the jurisdictional question,[3] the evidence disclosed the following: Prior to the effective date of the Act, October 24, 1938, respondent paid most of the 600 employees at its newspaper plant and radio station fixed weekly

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[2] Respondent attached to and made part of its answer a copy of its complaint in an action for a declaratory judgment filed by it against Street, the Regional Director of the Wage and Hour Division, and some of its employees. The action for a declaratory judgment was dismissed by the District Court and is not involved here.

[3] Respondent publishes at Dallas, Texas, the *Dallas Morning News*, a daily newspaper, and other periodicals, and operates radio station WFAA (R. 7–8). Both courts below rejected the contention of respondent (R. 11) that its employees were not engaged in interstate commerce or in the production of goods for interstate commerce (R. 189, 486). Respondent not only failed to raise the issue of coverage in its answer to the petition in this Court, but on the contrary urged this Court to dispose of the Section 7 issue. We therefore infer that respondent has abandoned any claim that it is not subject to the Act, and accordingly refrain from setting forth the jurisdictional facts.

salaries regardless of the number of hours worked (R. 9, 82–83). While there was no uniform schedule of hours, no one was authorized to work over 48 hours a week, except in emergencies, and women employees generally worked 44 hours a week (R. 63–64). No record was kept of the hours worked by these salaried employees (R. 54).[4] Immediately preceding the effective date of the Act, respondent requested its attorneys to formulate a plan whereby respondent could continue to work its employees the same number of hours per week and pay the same fixed weekly salary (R. 37–38, 85–86, 388). On advice of counsel, respondent on October 22, 1938, issued employment letters to about 400 employees, excluding those in the mechanical departments (R. 53–54). Each letter set forth what was termed "your basic rate of pay" per hour, and a guaranteed minimum weekly amount. The letters were in the following form (R. 467–468):

> JAMES S. ALDERMAN,
> *Station WFAA, Dallas, Texas.*
>
> DEAR SIR: The Fair Labor Standards Act which goes into effect on October 24, 1938, provides for the following minimum wages and maximum hours of employment:
>
> First year—25¢ per hour minimum, 44 hours maximum per week.

[4] However, records were kept of the hours of the linotypers, pressmen, and other employees of the so-called mechanical departments that operated under union contracts which set hourly and "shift" rates (R. 54–55).

Second year—30¢ per hour minimum, 42 hours maximum per week.

Third year—40¢ per hour minimum,[6] 40 hours maximum per week.

except that employees may work more than the number of hours specified above, provided that overtime rates shall be a minimum of one and one-half times the basic rate.

In order to conform our employment arrangements to the scheme of the Act without reducing the amount of money which you receive each week, we advise that from and after October 24, 1938, your basic rate of pay will be 67 cents per hour for the first forty-four hours each week, and that for time over forty-four hours each week you will receive for each hour of work not less than one and one-half times such basic rate above mentioned, with a guaranty on our part that you shall receive weekly, for regular time and for such overtime as the necessities of the business may demand, a sum not less than $40.00.

Very truly yours,

G. B. DEALEY, *President.*

Mr. G. B. DEALEY:

This will acknowledge receipt of your letter of October 22nd concerning wages and hours effective October 24, 1938.

(Signed) JAMES S. ALDERMAN.

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[6] The statutory minimum of 40 cents an hour does not become effective, pursuant to Section 6, until October 1945. This error was corrected in later letters (R. 51–53).

The record includes a stipulation (R. 466–474) setting out the relevant details of the letters issued to and signed by some forty employees. In these letters the weekly "guaranty" selected by the employer was the amount of the weekly salary obtaining prior to October 22, 1938 (R. 38–39, 86).[6] Almost without exception, respondent obtained the "basic" hourly rates set out in these letters by dividing the employee's weekly salary by 60 (R. 62, 88–89).[7] Additional letters were issued from time to time to new employees and to employees who received increases in pay[8] (R. 388, 466–474), the new "basic rates" likewise being one-sixtieth of the new guaranteed weekly salaries (R. 339–340).

Shortly after the effective date of the Act, respondent also instituted a time-keeping system for its salaried employees. Pay day was Tuesday for

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[6] Some raises in pay, apparently routine, were given. (See, for example, Pltf. ex. 2, R. 47, 194–309, at p. 207.)

[7] The exceptions occurred with respect to employees in the lower wage brackets, where division by 60 would have resulted in a "basic" rate lower than the then statutory minimum of 25 cents an hour. Thus, an employee named Bates was given a weekly "guaranty" of $14.50 and a "basic" rate of 25 cents an hour (R. 469).

[8] In a number of instances the new letters were signed some time after the employees actually received the raise. Anderson, for example, received a raise from $40 to $45 a week as early as September 11, 1939 (Pltf. ex. 2, R. 47, 195) but his new letter was not signed until October 24, 1939 (R. 472). Velma Boyce received a raise in pay as early as October 21, 1940 (Pltf. ex. 3, R. 47, 313) but did not get a new letter until January 31, 1941, four days before the trial of this case (R. 472).

the week ending the day before, and when an employee received his pay check he was required to hand in his time card showing the hours worked each day during the week just ended (R. 55–56, 129, 131, 338). Pay checks were prepared without reference to the hours worked; the pay-roll clerk began on Friday to prepare the checks to be distributed the following Tuesday (R. 144–145).

After October 24, 1938, as before, the number of hours worked by respondent's employees varied from week to week. The median figure continued to be about 48 hours for men and 44 for women. No change in working hours or in compensation was made on October 24, 1939, when the maximum hours stated in Section 7 of the Act decreased from 44 to 42 a week (R. 339–340), or so far as the record shows, on October 24, 1940, when the maximum became 40 hours (R. 127, 143, 148).

Despite the varying hours worked in excess of the statutory maxima after October 24, 1938, as before, the employees continued to receive, in the great majority of weeks, their weekly salaries or "guaranties," and no more.[9] Respondent's officials considered that the "employment letters" obviated any necessity of paying compensation in excess of the fixed weekly salaries, unless the employees worked hours in excess of 54½ a week during the first year of the Act; in excess of 54 the second year,

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[9] After October 24, 1938, just as before, respondent gave vacations with pay, sick leave, and Christmas bonuses (R. 78–79, 82), and paid for group life insurance (R. 180).

or in excess of 53⅓ hours thereafter (R. 89, 131–132).[10]

SPECIFICATION OF ERRORS

The court below erred:

1. In holding that the purpose of the overtime provisions was simply to establish and gradually raise minimum wages.

2. In holding that the "basic rates" specified in the contracts between the respondent and its employees were the "regular rates" at which the employees were employed within the meaning of the Fair Labor Standards Act of 1938.

3. In holding that nothing in the Act impairs the right of employer and employee to contract "as they have done here" for all-inclusive and regular weekly salaries regardless of variations in the hours worked each week.

4. In failing to hold that the regular rates at which respondent's employees were employed were

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[10] Since the "basic rate" was one-sixtieth of the stated salary, the salary was thought to permit a tolerance of 10½ hours during the first year, 12 the second year, and 13⅓ the third year, above the respective statutory maxima of 44, 42, and 40. Thus an employee "guaranteed" $18.00 per week had a "basic rate" of 30 cents per hour. During the first year his pay at straight time was considered to be $13.20 (44 hours x 30¢); the difference between that sum and $18.00 would cover 10½ hours at time and one-half (10½ x 45¢=$4.725). Similarly, in the second year straight pay of $12.60 (42 hours x 30¢) left 12 hours of "overtime" theoretically covered (12 x 45¢=$5.40); during the third year $12.00 was allocated to straight pay (40 hours x 30¢), leaving 13⅓ hours of overtime covered by the "guarantee" (13⅓ x 45¢=$6.00).

the rates of their actual compensation, and that they were entitled, for each hour of employment in excess of the statutory maxima, to additional compensation equal to one-half of the rates obtained for the particular week by dividing the amounts of their weekly salaries by the number of hours worked during the week.

5. In failing to find that the respondent had violated Sections 7 and 15 (a) (2) of the Act by employing its employees, who were engaged in interstate commerce or in the production of goods for such commerce, for workweeks longer than the maxima specified in Section 7 without compensating them for the excess hours at rates not less than one and one-half times the rates at which they were employed.

6. In failing to rule that the respondent had violated Section 15 (a) (1) of the Act by transporting, offering for transportation, shipping, delivering, and selling in interstate commerce goods in the production of which employees were employed in violation of Section 7 of the Act.

7. In failing to reverse the judgment of the district court.

SUMMARY OF ARGUMENT

I

A. Section 7 requires that overtime work be compensated "at a rate not less than one and one-half times the regular rate" at which the employee is employed. This can only mean 150

percent of the employee's actual rate of earnings during straight time. In the case of an employee receiving a fixed salary for a varying number of hours, the Administrator has consistently interpreted "regular rate" to mean the weekly wage divided by the number of hours actually worked during the particular week. His interpretation is entitled to great weight. *United States* v. *American Trucking Assns.*, 310 U. S. 534, 549. Every appellate court which has passed upon the question has upheld this construction of Section 7, and the court below has approved that construction in the absence of any agreement purporting to set the "regular rate" at a different figure. *Warren-Bradshaw Drilling Co.* v. *Hall*, 124 F. (2d) 42 (C. C. A. 5th), pending on petition for certiorari, No. 887, present Term.

B. The only basis for the contention that the interpretation stated can be avoided if the parties set the "regular rate" by contract is the assumption that Section 7 seeks only to regulate wages and is not concerned with hours of employment. But the Act shows on its face that Section 7 was directed to maximum hours. The legislative history is exceedingly clear that Congress was concerned with hours as well as with wages and that the "time and a half" requirement of Section 7 was intended to discourage overtime work by requiring the employer to pay extra compensation therefor regardless of the magnitude of the employee's regular rate of compensation.

II

If Section 7 is to serve its function as a deterrent of overtime hours, the employer may not avoid paying extra compensation and thus nullify the Act's only sanction against overtime, by selecting an artificial figure and labelling it the "regular rate." The undisputed purpose of respondent's employment letters was to permit respondent to maintain unchanged its working and wage schedule despite the Act. The employees received the same compensation regardless of the number of hours worked, except when that number exceeded certain figures which were far in excess of the statutory maxima. For the overtime hours above those maxima, but below respondent's own maxima, respondent paid no additional compensation and the intended statutory incentive toward elimination of such hours was frustrated.

It is immaterial that respondent was free to enter into a legally binding contract with its employees in which the rate of compensation was described in terms of an unreal and artificial formula; the pivotal consideration is that that formula is not the "regular rate" within the meaning of Section 7 because it does not reflect the employee's actual hourly earnings. Nor is the *bona fides* of respondent's attempt to avoid the Act material. *Union Pacific R. R. Co.* v. *United States,* 313 U. S. 450, 462 Parties may not by agreement restrict the application of the

Act. *Chicago B. & Q. R. R. Co.* v. *Maguire,* 219 U. S. 549, 567–571. And the fact that Section 7 precluded the setting by contract of a "regular rate" different from the statutory "regular rate" raises no substantial constitutional question. *West Coast Hotel Co.* v. *Parrish,* 300 U. S. 379, 391–395. To permit private arrangement to fix the scope of Section 7 would allow any who chose to make sport of the statute.

ARGUMENT

Respondent's employees after enactment of the Fair Labor Standards Act worked, almost without exception, the same hours for the same compensation as before its enactment, although their hours were substantially in excess of the statutory maxima. This was accomplished by treating the "basic rate" designated in the employment letters as the "regular rate" upon which overtime compensation is to be computed under Section 7. The court below did not hold that the "basic rate" stated in the letters reflected the actual rate of compensation, but held that respondent's plan was consistent with the Act on the following grounds: (a) The sole purpose of the Act, including the overtime provision of Section 7, is to raise substandard wages; hence it is satisfied by any arrangement between employer and employee for the payment of overtime so long as the compensation actually paid is equal at least to the statutory minimum compen-

sation for work up to the maximum hours and time and one-half that minimum for the remaining hours. (b) Respondent and its employees were, therefore, free to set the "regular rate at which he is employed," within the meaning of Section 7, at any figure (here, generally one-sixtieth of the weekly wage paid prior to the act) which would yield that result, without regard to the actual hourly earnings.

We shall show, first, that the consistent administrative interpretation of "regular rate" to mean the actual hourly rate of compensation is required by the statute and effectuates the primary purpose of Section 7 to discourage overtime employment; and, second, that respondent's employment letters cannot serve to change the "regular rate" into something other than the employee's actual hourly earnings.

I

THE "REGULAR RATE" WITHIN THE MEANING OF SECTION 7 (a) IS THE RATE AT WHICH THE EMPLOYEE IS ACTUALLY COMPENSATED DURING STRAIGHT TIME

A. THE MEANING OF "REGULAR RATE"

1. *The Text of the Statute.*—Section 7 (a) of the Act provides:

> No employer shall * * * employ any of his employees * * * for a workweek longer than forty-four [or 42 or 40] hours * * * unless such employee receives

> [overtime] compensation * * * at a rate not less than one and one-half times the regular rate at which he is employed.

The pivotal words, "one and one-half times the regular rate at which he is employed," can mean only a fifty percent increase of the employee's actual rate of earnings during straight time.[11] In the case of an employee hired at an hourly rate, the statutory requirement is indisputably clear: he must receive half as much again for his overtime hours.

Except for a rudimentary mathematical computation, the case is no different where an employee receives a fixed daily, weekly, or monthly salary. Since overtime, under Section 7, is expressed in hours per week, the required overtime compensation must speak in terms of a multiple of the regular *hourly* rate. Where the employee works a constant number of hours for a fixed salary, the answer is plain. The regular hourly rate is determined by dividing the fixed weekly[12] salary by the

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[11] The quoted phrase refers, of course, to the familiar "time and a half," a term generally understood to mean 150 percent of the compensation actually earned during straight time. In the debates on the bill the provision for overtime pay was termed "time and a half." 83 Cong. Rec. 9176 (Sen. Walsh), 83 Cong. Rec. 7404 (Rep. Boileau), 82 Cong. Rec. 1697 (Rep. Casey), 82 Cong. Rec. 1797 (Rep. Fitzgerald), 81 Cong. Rec. 7750 (Sen. Walsh), 81 Cong. Rec. 7780 (Sen. Austin), 81 Cong. Rec. 7792 (Sen. Bridges).

[12] Since Section 7 measures overtime in terms of hours per week, monthly wage rates must first be translated into weekly rates in order to compute the overtime rate.

constant number of hours, and the overtime compensation required is 150 percent of such rate.[13] The matter becomes debatable only in the case of an employee who works a fluctuating number of hours for a fixed salary. But even in this situation the answer is clear enough when it is recognized that the issue involves simply another application of the statutory requirement that one and one-half times the straight time compensation must be paid for the overtime hours.

Three methods of computation of the "regular rate at which he is employed" might theoretically be possible: (1) The weekly salary might be divided by the statutory maximum number of hours, giving a "regular rate" substantially in excess of the actual rate at which the employee is employed.[14] (2)

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[13] The courts have treated contracts providing a fixed salary in return for a definite number of hours as setting a specific and unvarying hourly rate. See *Bumpus* v. *Continental Baking Co.*, 124 F. (2d) 549, 553 (C. C. A. 6th), pending on petition for certiorari, No. 943, present Term; *Klotz* v. *Ippolito*, 40 F. Supp. 422 (S. D. Tex); *Reck* v. *Zarnocay*, 4 Wage Hour Rept. 305 (Sup. Ct. N. Y., N. Y. Co. 1941); *Emerson* v. *Mary Lincoln Candies*, 174 Misc. 353 (1940), affirmed, 261 App. Div. 879 (1941), affirmed, 287 N. Y. 33 (1941).

[14] This interpretation, which no court has accepted, would increase the required overtime payment, since the hourly rate would of necessity be higher; it might thus be thought to accomplish the congressional purpose to discourage overtime hours (*infra*, pp. 24–30) more surely than the other alternative methods. But Section 7 speaks of "the regular rate *at which he is employed*," and thus looks to the fact.

The "regular rate" might be determined by dividing the fixed salary by an average number of weekly hours worked during a base period of, say, six weeks, six months, or a year.[15] (3) The "regular rate" represents the weekly salary divided by the actual number of hours worked in that week. This third alternative does not require the departure from the actual rate of payment involved in the first alternative or the addition to the statutory language involved in the second alternative.

We submit that the third alternative is the correct one. It permits ready computation of overtime compensation required to be paid to an employee receiving a fixed salary for varying workweeks. Thus, if a $25 a week employee works 50 hours in a given week, with the present statutory maximum of 40 hours a week, there are 10 overtime hours. For each overtime hour he is entitled to

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not the ideal. If an employee works 50 hours for $25, his actual hourly rate is 50 cents, not 62.5 cents. Where the employee *regularly* works in excess of the maximum it is particularly clear that to determine his "regular rate" upon the basis of the maximum would yield a fictitious result. And since Section 7 imposes only a flexible limitation, there is no warrant for reading the statutory maximum as an implied condition of the employment contract.

[15] The Act, however, contains no hint of the period which would be used to determine the average number of hours worked. And Section 7 (a), in contrast to other sections (cf. secs. 3 (m), 6 (a) (5), 7 (b) (3), 7 (c), 8 (f), 11 (c), 13 (a) (1), 13 (a) (10), 14), does not direct the Administrator by regulation to particularize general statutory language.

receive one and one-half times as much compensation as he receives for each hour of straight time work. Since he was paid $25 for 50 hours of work, his "regular rate" for that week is 50 cents an hour. His compensation may therefore be computed as follows:

40 hours at 50 cents	$20.00
10 hours at 75 cents	7.50
Total	27.50

This method of computation can be applied uniformly regardless of the amount of the employee's compensation or the method or time of its payment, in strict analogy to the case of an employee who is hired and paid at a specified hourly rate. The hourly "regular rate" of the salaried employee will decrease in inverse ratio to the number of hours worked during the week, but this fluctuation from week to week as the number of hours varies in no way conflicts with any connotation of "regular" rate as used in Section 7. "Regular" is there used, not as equivalent to unchanging, but in contrast to special or unusual rates payable for overtime work; it means simply the normal, non-overtime, or straight-time, rate. See *Missel* v. *Overnight Motor Transp. Co.*, 5 Wage Hour Rept. 25 (C. C. A. 4th), pending on writ of certiorari, No. 939, present Term; *Graves* v. *Armstrong Creamery Co.*, 154 Kans. 365. Cf. *Wilson* v. *New*, 243 U. S. 332, 361–362. Section 7 is, indeed, simply an adaptation of a familiar legislative formula

through which overtime pay is phrased as a multiple of the "regular rate."[16]

2. *The Administrative Construction.*—Before the effective date of the Act, the Administrator of the Wage and Hour Division had already adopted the foregoing method of computation and advised employers that the "regular rate" was to be determined by dividing the number of hours worked during the particular workweek into the weekly wage. Interpretative Bulletin No. 4, issued October 21, 1938.[17] This interpretation has been consistently maintained through several revisions of the bulletin.[18] The Administrator has also promulgated, pursuant to Section 11 (a), regulations concerning the keeping of records. From the first

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[16] A number of illustrative State statutes and administrative orders requiring increased compensation for overtime work are collected in Appendix B, *infra*, pp. 48–50. Some of these statutes and orders speak of the straight time compensation as the "regular rate."

[17] The interpretative bulletins, unlike regulations pursuant to statutory authority (as in Sections 11 (c) and 13 (a) (1)) are not, and do not purport to be, binding. They avowedly do no more than express the Administrator's interpretation of the Act. See Administrative Procedure in Government Agencies, Part I, Administration of the Fair Labor Standards Act of 1938 (Monograph of the Attorney General's Committee on Administrative Procedure), S. Doc. No. 10, 77th Cong., 1st sess., pp. 71–72.

[18] The bulletin was re-issued, revised, or supplemented in November 1938, December 1939, July 1940, and November 1940.

issue, these regulations have reflected the construction adopted in Interpretative Bulletin No. 4.[19]

The consistent administrative interpretation represents the "contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new." As such, it is entitled to great weight. *United States* v. *American Trucking Assns.*, 310 U. S. 534, 549; *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 315; *Missel* v. *Overnight Motor Transp. Co.*, 5 Wage Hour Rept. 25 (C. C. A. 4th); *Bumpus* v. *Continental Baking Co.*, 124 F. (2d) 549 (C. C. A. 6th).

3. *Subsequent Legislative History.*—The administrative construction is confirmed by subsequent proposals to amend the Fair Labor Standards Act.[20]

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[19] See Title 29, Chapter 5, Code of Federal Regulations, Part 516, 3 Fed. Reg. 2533, October 21, 1938, Amendments of February 16, 1938; March 11, 1939; April 25, 1939; September 23, 1939; October 13, 1939; November 9, 1939; February 20, 1940; June 1, 1940; June 10, 1940; August 1, 1940; November 22, 1940; March 18, 1941; March 20, 1941. No changes were made with respect to this interpretation. On September 15, 1941, regulations were made effective repealing and superseding all previous regulations, 6 Fed. Reg. 4694. These regulations, which are now in effect, refer specifically to Interpretative Bulletin No. 4 in connection with the method of reporting the regular rates of salaried employees working a fluctuating workweek.

[20] See *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 487-489.

A few bills have been introduced to exempt salaried employees receiving above the minimum wage but have not been acted upon.[21] A less drastic bill was reported favorably by the House Committee on Labor; its report leaves no doubt as to the intended scope of the Act. It said (H. Rept. No. 522, 76th Cong., 1st sess., pp. 8–9):

> While the committee was of the opinion that the hour provisions of the act are as necessary and as beneficial to the ordinary clerical workers as to almost any other class of employees subject to the act, it is also believed that they should not include those employees whose work generally requires flexibility in working time and whose salaries are comparatively high. A guaranteed monthly salary of $200 was believed to be a satisfactory basis of exemption from the act. A lower figure than $200 would undoubtedly exempt a considerable number of salaried workers to whom the overtime benefits of the act should extend.

4. *The Decisions.*—This interpretation of "regular rate" has been accepted in the great ma-

[21] See also H. R. 4363, 76th Cong., 1st sess., Feb. 21, 1939, a bill by Congressman Cox to exempt clerical employees employed on a straight-salary basis; H. R. 4645, 76th Cong., 1st sess., Mar. 1, 1939, a bill by Congressman Thomas, of Texas, to exempt clerical employees, writers, and reporters receiving more than $1,200 a year; 86 Cong. Rec. 5455, May 2, 1940, an amendment by Congressman Harrington to exempt monthly salaried employees who receive more than the minimum wage established by Section 6.

jority of cases arising under the Act. The view that the "regular rate" of an employee is the rate at which he is actually compensated has been applied whether the employment is on a salary, by the hour, or at piece work.[22] In the case of employees not employed on an hourly basis, some 15 courts have computed the regular rate by dividing the wages received by the hours worked to earn such wages.[23] Only a minority of five lower court

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[22] *Bumpus* v. *Continental Baking Co.* 124 F. (2d) 549 (C. C. A. 6th); *Fleming* v. *Carleton Screw Products Co.*, 37 F. Supp. 754 (Minn.); *Fleming* v. *Pearson Hardwood Flooring Co.*, 39 F. Supp. 300 (E. D. Tenn.); *St. John* v. *Brown*, 38 F. Supp. 385 (N. D. Tex.); *Drake* v. *Hirsch*, 40 F. Supp. 290 (N. D. Ga.); *Sunshine Mining Co.* v. *Carver*, 41 F. Supp. 60 (Idaho); *Thornberg* v. *Eastern T. & W. N. C. Motor Transp. Co.*, 3 Wage Hour Rept. 534 (Sup. Ct. Tenn. 1940); *Boylan* v. *Liden Mfg. Co.*, 4 Wage Hour Rept. 158 (C. C. Mich., 1941); *Murray* v. *Noblesville Milling Co.*, 5 Wage Hour Rept. 55 (S. D. Ind. 1942).

[23] *Missel* v. *Overnight Motor Transportation Co.*, 5 Wage Hour Rept. 25 (C. C. A. 4th); *Muldowney* v. *Seaberg Elevator Co.*, 39 F. Supp. 275, 282 (E. D. N. Y.); *Abadie* v. *Cudahy Packing Co. of Louisiana*, 37 F. Supp. 164 (E. D. La.); *Moss* v. *Postal Telegraph-Cable Co.*, 4 Wage Hour Rept. 291 (M. D. Ga. 1941); *Graves* v. *Armstrong Creamery Co.*, 154 Kans. 365 (1941); *Williams* v. *General Mills*, 39 F. Supp. 849 (N. D. Ohio); *Haddad* v. *Beckerman Shoe Corp.*, 4 Wage Hour Rept. 329 (C. C. Pa. 1941); *St. John* v. *Brown*, 38 F. Supp. 385 (N. D. Tex.); *Angel* v. *Dayton Veneer & Lumber Mills*, 4 Wage Hour Rept. 471 (M. D. Ga. 1941); *Wagner* v. *Estate of Abe Field*, 4 Wage Hour Rept. 329 (Super. Ct. Ind. 1941); *McMillan* v. *Wilson & Co.*, decided February 27, 1942 (Sup. C . Minn.); *Hargrave* v. *Mid-Continent Petroleum Corp.*, 36 F. Supp. 233 (E. D. Okla.); *McLendon* v. *Bewley Mills*, 4 Wage Hour Rept. 30 (N. D. Tex. 1940); *Klotz* v. *Ippolito*, 40 F. Supp. 422 (S. D. Tex.);

decisions are to the contrary.[24] These cases, like the decision of the court below in the instant case, proceed on the erroneous assumption (*infra*, pp. 24–30) that the Act merely regulates minimum wages and has nothing to do with hours.

The court below has held, subsequent to the decision under review, that "if there is no agreement fixing the amount to be paid for regular and overtime work, the regular rate * * * may properly be determined by dividing the total pay each week by the total hours worked." *Warren-Bradshaw Drilling Co.* v. *Hall*, 124 F. (2d) 42, 44.[25]

Reck v. *Zarnocay*, 4 Wage Hour Rept. 305 (1941); *Allen* v. *Moe*, 5 Wage Hour Rept. 106 (D. Idaho, 1942); *Emerson* v. *Mary Lincoln Candies*, 174 Misc. 353 (1940), affirmed 261 App. Div. 879 (1941), affirmed 287 N. Y. 33 (1941).

[24] *Gurtov* v. *Volk*, 170 Misc. 322 (Munic. Ct. N. Y. 1939); *Reeves* v. *Howard County Refining Co.*, 33 F. Supp. 90 (N. D. Tex.); *Fleming* v. *Stone*, 41 F. Supp. 1000 (N. D. Ill.); *Keegan* v. *Ruppert*, 4 Wage Hour Rept. 712 (S. D. N. Y. 1941); *Schlee* v. *Lincoln Oil Co.*, 5 Wage Hour Rept. 72 (C. C. Mich., 1941). In the *Reeves* case, the court adopted the "minimum wage" theory, but two employees who were compensated at rates above the minimum recovered overtime compensation. The *Stone*, *Keegan* and *Schlee* cases were decided primarily on the authority of the decision of the Circuit Court of Appeals in the case at bar.

[25] In its opinion in the case at bar, the Circuit Court of Appeals stated that "In cases where there is no express agreement as to the regular rate at which the employee is employed, but only an agreement for a weekly wage, appellant's [the Administrator's] method of arriving at the regular rate * * * would, we think, be unexceptionable" (R. 489). In view, however, of the court's emphatic assertion that the purpose of the Act was solely to regulate

In result, every appellate court, and every trial court save five, which has considered the question (see *supra*, pp. 22–23), has sanctioned the administrative construction of Section 7.

5. *The War Emergency.*—Respondent joined in urging that a writ of certiorari issue here, asserting that to interpret the Act as intended to discourage hours of labor in excess of the statutory maxima "is square in the face of the needs of national defense" (Memo., pp. 5, 7). But it is submitted that this Court is an inappropriate forum in which to debate the merits of a congressional policy which has been so clearly expressed (see *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381, 394; *Nebbia* v. *New York*, 291 U. S. 502, 537), and which, if change were contemplated would no doubt be the subject of careful legislative study.[26]

B. THE ADMINISTRATOR'S INTERPRETATION OF "REGULAR RATE" EFFECTUATES THE POLICY OF THE ACT TO DISCOURAGE OVERTIME EMPLOYMENT

The court below, while it regarded the Administrator's interpretation of Section 7 as otherwise "unexceptionable," held that since the Act was confined in purpose to the regulation of wages its objective would not be frustrated by permitting

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wages, the significance of the quoted sentence was not apparent until clarified by the decision in the *Warren-Bradshaw* case.

[26] See, for example, General Order No. 13 of the Chief of Ordnance November 15, 1917, reproduced in Annual Report of the Administrator, Wage and Hour Division, 1940, Chap. 1; pp. 23–24.

the "regular rate" to be set, by contract, at a different figure than is yielded through the Administrator's method of computation (*supra*, pp. 13–14). In *Overnight Motor Transportation Co., Inc.* v. *Missel*, No. 939, to be argued immediately following the instant case, the petitioner urges the same limited construction of the Congressional purpose and, on the basis of that construction, contends that the overtime compensation provisions of Section 7 do not apply at all where the employee's total weekly compensation equals at least the statutory minimum for straight time and time and one-half that minimum for the remaining hours, or, in the alternative, that Section 7 be read to require only time and a half the minimum rate prescribed in Section 6.

By requiring overtime compensation at 150 per cent of the regular rate, Congress plainly intended to discourage hours of work in excess of the stated maxima for all employees, other than those specifically excepted, whether their regular compensation be munificent or only at the statutory minimum. This intent is clear both on the face of the Act and from its legislative history.

1. Section 7 (*supra*, pp. 14–15) is entitled "Maximum Hours." As its title plainly shows, it is directed to maximum hours and not to minimum wages. It does not declare that the minimum wage for overtime hours shall be one and one-half times the minimum rate for straight time; rather, it requires overtime compensa-

tion at the rate of one and one-half times the regular rate, regardless of its magnitude. Such additional compensatio. at 150% of the regular rate was intended as a sanction to enforce the statutory prohibition of employment beyond the maximum number of hours. Although the relative mildness of the sanction shows that the statute was designed to discourage rather than to eliminate overtime, it nonetheless remains a plain direction that "no employer shall * * * employ any of his employees * * * for a workweek longer than" the prescribed number of hours.[27]

Moreover, the provisions which exempt certain classes of employees from the operation of Section 7 (a) demonstrate that that section is primarily concerned with hours of employment. The hours of labor of those exempted are either subject to other regulation,[28] are difficult to standardize,[29] or

[27] Section 18, dealing with the relation of the Act to other laws, refers to "the maximum workweek established under this Act." Section 11 (a), relating to investigations, and section 11 (c), relating to records, both refer to "wages, hours, and other conditions and practices of employment."

[28] Section 13 (b) (1) exempts employees with respect to whom the Interstate Commerce Commission has power to established maximum hours. Section 13 (b) (2) exempts railroad employees, whose hours are regulated under collective bargaining agreements of long standing and the Hours of Service Act (34 Stat. 1415, 45 U. S. C. 61). Section 7 (b) allows a limited exemption for employees who are employed under collective bargaining agreements which limit the hours of employment.

[29] Section 13 (a) (1) exempts executive and professional employees and outside salesmen.

reflect an economic basis for hours of work in excess of the maxima for limited periods.[20] Thus, Section 7 (a) and the related sections form a consistent and comprehensive pattern of hours regulation wholly without reference to the minimum wage provisions of the Act.

The only reasonable conclusion from the language of the statute is that Congress intended to regulate hours of labor, as well as minimum wages. To that end, it prohibited employment beyond a specified maximum workweek unless the prescribed compensation was paid for overtime.

The legislative history strongly buttresses this conclusion. The two practically identical bills introduced in each house pursuant to the President's recommendation that Congress "define a general maximum working week,"[21] provided for a board that might prohibit altogether a workweek longer than the statutory maximum or might permit overtime on condition that the employee receive "additional compensation" at the rate of time and a half his "regular hourly wage rate."[22] In report-

[20] Section 7 (b) follows a limited exemption for employees in seasonal industries. Section 7 (c) exempts employees engaged in work on perishable commodities.

[21] Message to Congress, May 24, 1937, 81 Cong. Rec. 4961. The message noted that longer hours might be permitted "on the payment of time and a half for overtime."

[22] S. 2475, referred to the Committee on Education and Labor of the Senate, 81 Cong. Rec. 4954 (1937); and H. R. 7200, referred to the Committee on Labor of the House of Representatives, 81 Cong. Rec. 4998 (1937), each in the 75th Congress. While the bill passed by the Senate contained

ing the Senate bill the Committee on Education and Labor said:[33]

> The committee believes that a start should be made at the present session of the Congress to protect this Nation from the evils and dangers resulting * * * from long hours of work injurious to health. This law proposes to accomplish this purpose * * *. * * * it is the objective of the act to attain a maximum workweek of not more than 40 hours as rapidly as practicable without curtailing earning power or reducing production, and the attainment of a shorter workweek by collective bargaining or otherwise is to be encouraged.

The House Committee on Labor, in reporting on the same bill, repeated *verbatim* this "objective of the act" and added that flexibility had been introduced into the "regulation of hours" by authorizing employment in excess of the applicable maximum upon condition of payment of one and one-half times the regular rate.[34] The conference report on the bill in its final form was agreed to unanimously

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substantially the original provisions as to hours regulation (81 Cong. Rec. 7957 (1937); 83 Cong. Rec. 9246 (1938)), the House amended the bill so as to eliminate the board's power to set an inflexible maximum workweek, but retaining the prohibition of overtime unless the employer paid "at the rate of one and one-half times the regular hourly rate" (83 Cong. Rec. 7450).

[33] S. Rept. 884 on S. 2475, 75th Cong., 1st sess., July 6, 1937, pp. 4, 7.

[34] H. Rept. 1452, 75th Cong., 1st sess., August 6, 1937, pp. 14–15.

by the managers on the part of the Senate and of the House. Under the heading "Maximum Hours" the report[35] states:

> Section 7 of the conference agreement provides for the establishment of maximum hours of employment * * *. The conference agreement contains in section 7 (a) the definite maximum hours of employment * * * with overtime work permissible upon the payment of one and one-half times the regular wage rate.[36]

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[35] 83 Cong. Rec. 9249, 9254 (1938).

[36] In the debates it was repeatedly declared that the purpose of section 7 (a) was to reduce hours of labor. 83 Cong. Rec. 9177 (Sen. Walsh), 83 Cong. Rec. 9252, 9254, 9258 (Rep. Randolph), 7311 (Rep. Sirovich), 7315 (Rep. Mott), 7325 (Rep. Wolverton), 7428 (Rep. Connery), 82 Cong. Rec. 1415 (Rep. Curley), 1470 (Rep. Jenks), 1477 (Rep. Rutherford), 1480 (Rep. Dorsey), 1676 (Rep. Shafer), 81 Cong. Rec. 7651 (Sen. Walsh), 7779 (Sen. Austin), 7791 (Sen. Bridges), 7802 (Sen. Maloney); 82 Cong. Rec. 1391 (Rep. Norton); 81 Cong. Rec. 7650 (Sen. Walsh). A spread of employment was expected to result from the shortened workweek. 83 Cong. Rec. 9176 (Sen. Walsh), 82 Cong. Rec. 1696 (Rep. Norton), 83 Cong. Rec. 9263, 7314 (Rep. Dunn), 7323 (Rep. DeMuth), 7325 (Rep. Wolverton), 7278 (Rep. O'Connor), 7428 (Rep. Connery), 7428 (Rep. Patrick), 82 Cong. Rec. 1415 (Rep. Curley), 1479 (Rep. Jenks), 82 Cong. Rec. 1477 (Rep. Rutherford), 82 Cong. Rec. 1478 (Rep. Dorsey), 82 Cong. Rec. 1486 (Rep. Wood), 82 Cong. Rec. 1490 (Rep. Teignan), 82 Cong. Rec. 1672–1672 (Rep. Ellenbogen), 82 Cong. Rec. 1672 (Rep. Shafer), 81 Cong. Rec. 7746 (Sen. Black), 81 Cong. Rec. 7807 (Sen. Maloney), 81 Cong. Rec. 7848 (Rep. Healey), 81 Cong. Rec. 7941 (Sen. Barkley). See also 83 Cong. Rec. 7314 (Rep. Dunn), 82 Cong. Rec. 1470 (Rep. Jenks), 82 Cong. Rec.

This Court has recognized that hours, as well as wages, are included within the substandard "labor conditions" at which the Act is aimed. *United States* v. *Darby*, 312 U. S. 100, 109–110. The Court summarized the provisions of Section 7 by saying (p. 110): "the maximum hours of employment for employees 'engaged in commerce or the production of goods for commerce' without increased compensation for overtime, shall be forty-four hours a week." While the Court stated (p. 125) that both sections 6 and 7 "are minimum wage requirements compelling the payment of a minimum standard wage with a prescribed increased wage for overtime," Section 7 was upheld, not as a regulation of minimum wages as such, but as a regulation of hours, and the validity of Section 7 under the Fifth Amendment was sustained on the authority of cases dealing with maximum hour statutes (p. 125). A large majority of the lower Federal courts and State courts have likewise held that Section 7 is designed as a flexible regulation of hours and not as a minimum wage provision.[37]

1487 (Rep. Mott), 82 Cong. Rec. 1601 (Rep. Phillips), 81 Cong. Rec. 7803 (Sen. Maloney). The provision for overtime compensation was termed a "penalty" on overtime work, which would tend to reduce it. 82 Cong. Rec. 1600 (Rep. Coffee), 81 Cong. Rec. 7655, 7809 (Sen. Walsh), 82 Cong. Rec. 1697 (Rep. Smith).

[37] *Fleming* v. *Hawkeye Pearl Button Co.*, 113 F. (2d) 52, 56 (C. C. A. 8th); *Bowie* v. *Gonzalez*, 117 F. (2d) 11, 16 (C. C. A. 1st); *Bumpus* v. *Continental Baking Co.*, 124 F.

II

RESPONDENT'S EMPLOYMENT LETTERS MAY NOT SERVE TO CHANGE THE EMPLOYEE'S "REGULAR RATE"

We have shown that "regular rate" in Section 7 means the employee's actual rate of earnings during straight time and that the prescribed fifty percent increase in the rate of actual compensation was intended by Congress to discourage overtime. If Section 7 is to serve this function, the employer plainly may not avoid paying extra compensation and thus nullify the Act's only sanction against overtime, merely by selecting an artificial figure, wholly unrelated to actual wages, and labeling it the "regular rate."

That is precisely what respondent did here; it asks the Court to sanction a "technically elegant arrangement" (*Griffiths v. Commissioner*, 308

(2d) 549 (C. C. A. 6th); *Missel* v. *Overnight Motor Transp. Co.*, 5 Wage Hour Rept. 25 (C. C. A. 4th); *Fleming* v. *Carleton Screw Products Co.*, 37 F. Supp. 754, 758 (Minn.); *St. John* v. *Brown*, 38 F. Supp. 385, 390 (N. D. Tex.); *Williams* v. *General Mills*, 39 F. Supp. 849 (N. D. Ohio); *Sunshine Mining Co.* v. *Carver*, 41 F. Supp. 60, 67 (Idaho); *DuBois Soap Co.* v. *Floyd*, 38 N. E. (2d) 919 (C. A. Ohio 1941); *Butte Miners' Union No. 1* v. *Anaconda Copper Min. Co.*, 118 P. (2d) 148, 152 (Mont. 1941); *Abroe* v. *Lindsay Bros. Co.*, 300 N. W. 457, 458 (Sup. Ct. Minn. 1941); *McMillan* v. *Wilson & Co., Inc.*, decided February 27, 1942 (Sup. Ct. Minn.); *Fleming* v. *Knox*, 5 Wage Hour Rept. 38 (S. D. Ga. 1941). Five cases, apart from the decision below, have held that Section 7 was designed to establish a minimum wage for overtime instead of working to discourage overtime generally. They are cited *supra*, footnote 24, p. 23.

U. S. 355, 357) plainly intended to avoid the "time and a half" requirement. In fixing a "basic rate" at one-sixtieth the weekly salary together with a guaranty of the latter, the employment letters were quite evidently designed to permit respondent to maintain unchanged its working and wage schedule despite the Act. In transmitting the letters embodying the plan to a supervisor at the radio station, respondent's paymaster on October 22, 1938, sent a note which stated: "It is to be impressed on the signers that they sign willingly, that there is no change in their hours and pay. It is merely aligning us all with the requirements of the Wages and Hours Act that is effective Sunday night, at midnight, October 24, 1938" (R. 388). Similarly, in a memorandum "To all Department Heads" dated October 19, 1939, explaining the plan, the chairman of the board stated that since there were "only a few office boys and clerks in minor capacity that earn less than the required minimum, *the change will have very little effect on our operation*" (R. 339).

The record discloses the accuracy of this prediction. By using 60 as a divisor to obtain the "basic rate," respondent in effect set up its own scale of maximum hours at so high a level, in relation to ordinary operations, that it almost entirely avoided the payment to the employees of any more than their fixed weekly salaries (R. 89, 131–132,

390). Compare note 10, p. 9, *supra*. The result, of course, was that the overtime hours between the statutory maxima and respondents' maxima cost respondent nothing additional and the intended statutory incentive toward elimination of such hours was completely thwarted.

The evidence shows in detail this frustration of the Congressional policy. Transcriptions of respondent's pay roll and time records for 48 employees were introduced in evidence (R. 194–309, 310–337). These transcriptions covered over 1,100 workweeks, between October 24, 1938, and the end of 1940. In over 800 of these 1,100 weeks, hours in excess of the statutory maxima were worked. Yet in only about 30 of these workweeks did employees receive any compensation in addition to their fixed salaries, and then only when they worked more than 54½, 54, or 53 hours a week (R. 273, 276, 314–315, 319, 326–327, 328, 332, 334, 336–337).[38]

Neither respondent's "basic rates" (one-sixtieth of the salaries) nor the number of hours worked had any effect upon the amount of compensation received, except in those rare weeks longer than respondent's own maxima. (a) As applied by respondent, the same "basic rate" for the same hours gave different weekly wages to different em-

[38] In practically as many weeks no additional compensation was paid even for hours in excess of respondent's maxima (R. 214, 231–232, 250, 273, 289, 321–323, 327).

ployees.[39] (b) Employees received increases in the "basic rates" and continued to receive exactly the same weekly pay as before.[40] (c) In other cases, corresponding increases in the "basic rates" produced wholly different results in the weekly pay.[41] (d) In other instances the weekly wage was increased while the hourly "basic rate" and the

[39] See the following table:

	Basic hourly rate	Hours worked	Guaranteed weekly wage
	Cents		
Byron Bates (R. 202, 472)	30	48	$16.50
	30	48	16.00
Joe A. Greeley (R. 240-242, 472)	30	48	16.50
Robert Montigue (R. 273-276, 469, 473)	30	45-48	15.00
	30	45-48	15.60
Harrill Eastus (R. 227-231, 472)	30	45	18.00
Miss Audrey Batts (R. 205-208, 472)	30	44	18.00

[40] Burleson's contract of October 22, 1938, called for a "basic rate" of 25 cents an hour with a guaranteed weekly wage of $15.00. In October 1939, a new contract was executed raising the "basic rate" to 30 cents, but his weekly pay remained $15.00 and he continued to work approximately the same hours (R. 214–215, 469, 472). Likewise, Greeley's contract of October 22, 1938, had a "basic rate" of 27 cents an hour with a guaranteed weekly wage of $16.00. His October 24, 1938, contract stated a "basic rate" of 30 cents an hour, but his weekly wage remained the same and he continued to work exactly the same hours (R. 240–241, 469, 472).

[41] An increase of 4 cents an hour in Miss Vickers' "basic rate" coincided with an increase of her weekly wage from $25.00 to $27.50 (R. 295–298, 470, 473), although increases of 5 and 3 cents in the hourly "basic rates" of Burleson and Greeley affected their weekly wage not at all, and although she worked fewer hours than they. (Note 40, *supra*.)

hours worked remained the same.[42] (e) Employees worked varying numbers of hours, including varying amounts of statutory overtime, yet received the same pay each week.[43] (f) Finally, when the statutory number of hours changed, an employee could nevertheless receive the same pay for the same hours.[44]

Except in rare instances where respondent paid extra for hours in excess of 54½ (or 54 or 53), it made no use of the "basic rates" in calculating the employees' pay. The "basic" rates appear in the "employment letters," but they appear nowhere else on respondent's records. The only possible conclusion is that the rates at which respondent's employees were actually employed—the rates which actually determined the amounts of their

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[42] Bates' guaranteed weekly wage was increased from $15.30 to $16.50, but his "basic rate" per hour remained 30 cents and his weekly hours continued to be 48 (R. 202–204, 472). Newnam's guaranteed weekly wage was increased from $16.00 to $18.00, but his "basic rate" stayed at 30 cents an hour, and his hours averaged about the same, decreasing if anything (R. 281–284, 473).

[43] West worked weeks of 46, 32, and 48 hours for $35.00 a week (R. 299–302). Brown worked weeks of 46¾, 34¼, 51¾, 48¼, and 50 hours, all for a weekly $45.00 (R. 314–315).

[44] Miss Batts worked 44 hours for $18.00 in every week shown, although during the first year of the Act with a statutory maximum of 44 hours, her week included no overtime, while during the second year it included 2 overtime hours and during the third year 4 hours (R. 205–208).

compensation—were the weekly rates in the amounts of their respective salaries. Whatever the "basic rates" may have been,[45] they were not the "regular rates" of pay of respondent's employees.

In urging that the employment letters could not serve to exempt respondent from the statutory command and that the employees' overtime compensation must be computed on their actual rates

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[45] Respondent argued in its brief below (pp. 31–32, 37, 47, 60–61) that all compensation in excess of the basic rates was overtime. But under respondent's "allocation" of the weekly salary between regular time and overtime compensation (note 10, p. 9, *supra*), the "overtime" hourly rates would vary fantastically. An employee with a guaranteed weekly salary of $30.00 would have a "basic rate" of 50 cents an hour. With a statutory maximum of 40 hours a week, if he worked 50 hours, $20.00 of the salary would be allocated to "regular time" (40×50), and $10.00 to the 10 hours overtime, so that his overtime rate would be twice his "basic rate." If he worked only 42 hours, his "regular time" compensation would remain at $20.00 and his overtime compensation for 2 hours at $10.00, so that his overtime rate would be $5.00 an hour, or 10 times his "basic rate." And if he worked but 40 hours, he would receive overtime compensation of $10.00—one-half of his straight time wages—for working no overtime at all.

During the trial, respondent attempted to explain the variable difference between the guaranteed weekly wage actually paid, and what the compensation would have been if computed on the "basic rates," by characterizing that difference as a "bonus" (cf. R. 15, 31, 87). But since respondent was under contractual obligation to pay that amount, it was an integral part of the normal earned compensation, and not a bonus either in the sense of a gratuity (*Bogardus* v. *Commissioner*, 302 U. S. 34, 44) or as some special payment for services (*Kenicott* v. *The Supervisors*, 16 Wall. 452, 471).

of pay, as it would be were the letters absent, we do not contend that respondent was not free to enter into new contracts of employment. Our contention is that the artificial "basic rates" fixed in these letters, when considered in conjunction with the weekly guaranty, were obviously not the "regular rates" within the meaning of Section 7 (a), as the court below held them to be.[16] We do not question that all rates of pay have their ultimate basis in the agreement of employer and employee or that the Act permits a genuine reduction in wages.[17] Our position is simply that the "regular rate" within the meaning of the statute is the actual rate of compensation under the contract rather than the artificial figure which the contract may describe as the rate.

Respondent relies heavily upon the District Court's finding (R. 187–189), approved by the Circuit Court of Appeals (R. 486, 488, 495), that

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[16] The district court purported to find as a fact "that the regular wage upon which overtime or time and a half has been figured in each instance is the regular wage that the employer and employee had contracted for, and that such regular wage is in excess of the legal minimum wage" (R. 189.) This "finding of fact" does not rest upon the court's appraisal of conflicting evidence, but upon the court's conception of "regular rate" and is actually a ruling of law that the "regular rate" is the "agreed" or "contract" rate. *Meade* v. *United States*, 9 Wall. 691; *The Britannia*, 153 U. S. 130, 141; *Truax* v. *Corrigan*, 257 U. S. 312, 325.

[17] Section 18, *infra*, declares that nothing in the Act shall justify a wage reduction but does not undertake to forbid a reduction to any level above the minimum.

the contracts were *bona fide*. Nothing we have said implies the contrary. There is no indication that the contracts were procured by fraud or duress or that their purpose to avoid the requirements of the Act showed a dishonest intent. But if we are correct in maintaining that "regular rate" in Section 7 means the employee's actual hourly compensation, the parties' "*bona fides*" in contracting that it shall mean something else as applied to them is immaterial; the Act is concerned not with their state of mind but with the fact of their actions. *Union Pacific R. R. Co.* v. *United States*, 313 U. S. 450, 462. That fact is that, as to any employee who worked less than respondent's "maxima" of 54.5, 54, or 53.3 hours per week, the weekly salary guaranty inevitably set the actual hourly rate of earnings, and therefore the "regular rate," at something higher than the arbitrary "basic rate" specified in the employment letters. No agreement that the regular rate is different from what it is in fact can affect the operation of the Act.

Respondent surely cannot successfully contend that statutes should be so construed that compliance with them may become a matter of private choice, *New York, New Haven and Hartford R. R. Co.* v. *Interstate Com. Comm.*, 200 U. S. 361, 392, or that the parties may by agreement restrict their application. *Chicago, B. & Q. R. R. Co.* v. *McGuire*, 219 U. S. 549, 567–571; *Norman* v. *Baltimore & Ohio R. R. Co.*, 294 U. S. 240, 307. Like other

remedial statutes in the public interest (see *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, 364), wage-hour statutes are not to be waived or avoided by private agreement. *United States* v. *Morley Const. Co.*, 98 F. (2d) 781, 788 (C. C. A. 2d), certiorari denied, *sub nom. Maryland Casualty Co.* v. *United States*, 305 U. S. 651; *Larsen* v. *Rice*, 100 Wash. 642 (1918); *Montgomery Ward & Co.* v. *Lusk*, 52 S. W. (2d) 1110 (Tex. 1932). That regulatory statutes like Section 7 affect freedom of contract raises no substantial constitutional question. See *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 391–395; *Olsen* v. *Nebraska*, 313 U. S. 236.

These settled principles apply with full force to the Fair Labor Standards Act. *Fleming* v. *Warshawsky & Co.*, 123 F. (2d) 622 (C. C. A. 7th); *Fleming* v. *Carleton Screw Products Co.*, 37 F. Supp. 754 (Minn.), appeal pending; *McLendon* v. *Bewley Mills*, 4 Wage Hour Rept. 30 (N. D. Tex. 1940); *Murray* v. *Noblesville Milling Co.*, 5 Wage Hour Rept. 55 (S. D. Ind. 1942); cf. *Fleming* v. *Atlantic Co.*, 40 F. Supp. 654 (N. D. Ga.). Otherwise the statutory command would reach only to those who, from nobility or from naïveté, failed to notify their employees that their "agreed rate" of pay was some conveniently low figure.[46]

[46] If the principles which respondent defends are approved, there is room for the extraordinary contention that an agreement setting the "regular rate" must be implied by the court if the parties have not made one for themselves. In *Conti-*

Since the only acknowledged limitation on the power to set "agreed" rates is the minimum wage prescribed by Section 6, there would under respondent's interpretation be a tendency to adopt that minimum as the "agreed rate."[39] At an

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nental Baking Co. v. *Bumpus*, No. 943, this Term, pending on petition for certiorari, an employment contract entered into prior to the Act provided for a salary of $25 per week of 48 hours. Although no modification of the contract was ever attempted, the petitioner maintains that since the "contract must be construed so as to sustain its legality," it was automatically adjusted when the Act became effective by allocating a portion of the weekly compensation to the hours within the statutory maximum and the remainder of the compensation to the excess hours at a rate one and one-half times the presumed rate for hours up to the maximum. When the statutory maximum was reduced from 44 to 42 hours at the end of the first year of the Act's operation, a further automatic adjustment assertedly occurred, with the result that the rate for "straight time" diminished but the required proportion between it and the overtime rate remained constant. Compare *Fleming* v. *Stone*, 41 F. Supp. 1000 (N. D. Ill), where prior to the Act the employees received fixed weekly salaries for fluctuating workweeks. The court, relying upon the decision below in the present case, inferred an agreement setting the "regular rate" sufficiently low so that the total compensation included "time and a half" for overtime hours. Since the workweek fluctuated, the inference necessarily included an automatic weekly adjustment of the "agreed" regular rate.

[39] In at least three cases the minimum wage has been set as the "agreed rate." *McLendon* v. *Bewley Mills*, 4 Wage Hour Rept. 30 (N. D. Tex. 1940); *Fleming* v. *Atlantic Co.*, 40 F. Supp. 654 (N. D. Ga.); *Tidewater Optical Co.* v. *Wittkamp*, pending decision, No. 2506, Supreme Court of Appeals of Virginia at Richmond. In the *Atlantic* case the court first held the agreed minimum rates to be an "arbitrary allocation" of part of the salary and not the "regular

"agreed rate" of 30 cents an hour, the present minimum, a $30 a week employee, under the present statutory maximum week of 40 hours, could work as long as 80 hours a week without receiving any additional compensation. To permit private arrangement thus to fix the scope of Section 7 would allow any who chose to make sport of the statute.

CONCLUSION

The decision below should be reversed, and the cause remanded with directions to issue an injunction as prayed in the complaint.

Respectfully submitted.

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MARCH 1942.

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rates" (40 F. Supp. at 664). On motion for rehearing the court, under the compulsion of the decision below, held the agreed minimum rates to be the regular rates.

APPENDIX A

Fair Labor Standards Act, 52 Stat. 1060 (29 U. S. C., sec. 201 *et seq.*).

SEC. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—

(1) during the first year from the effective date of this section, not less than 25 cents an hour,

(2) during the next six years from such date, not less than 30 cents an hour,

(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 8, whichever is lower, and

(4) at any time after the effective date of this section, not less than the rate (not in excess of 40 cents an hour) prescribed in the applicable order of the Administrator issued under section 8.

* * * * * *

SEC. 7. (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand hours during any period of twenty-six consecutive weeks,

(2) on an annual basis in pursuance of an agreement with his employer, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that the employee shall not be employed more than two thousand hours during any period of fifty-two consecutive weeks, or

(3) for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year in an industry found by the Administrator to be of a seasonal nature,

and if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(c) In the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugarbeet molasses, sugarcane, or maple sap, into sugar (but not refined sugar) or into syrup, the provisions of subsection (a) shall not apply to his employees in any place of employment where he is so engaged; and in the case of an employer engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables, or in the first processing, within the area of production (as defined by the Administrator), of any agricultural or horticultural commodity during seasonal operations, or in handling, slaughtering, or dressing poultry or livestock, the provisions of subsection (a), during a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, shall not apply to his employees in any place of employment where he is so engaged.

* * * * * *

SEC. 11. (a) The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this Act, * * *. Except as provided in section 12, the Administrator shall bring all ac-

tions under section 17 to restrain violations of this Act.

* * * * *

(c) Every employer subject to any provision of this Act or of any order issued under this Act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder.

* * * * * *

SEC. 13. (a) The provisions of sections 6 and 7 shall not apply with respect to (1) any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator); * * *.

(b) The provisions of section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act.

* * * * * *

SEC. 15. (a) After the expiration of one hundred and twenty days from the date of enactment

of this Act, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Administrator issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation;

(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Administrator issued under section 14;

* * * * * *

(5) to violate any of the provisions of section 11 (c), or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

* * * * * *

SEC. 17. The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 20 (relat-

ing to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U. S. C., 1934 edition, title 28, sec. 381), to restrain violations of section 15.

SEC. 18. No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act or a maximum workweek lower than the maximum workweek established under this Act, and no provision of this Act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act. No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.

APPENDIX B

1. State statutes and regulations referring to a multiple of the "regular" or "normal" rate as a way of expressing the familiar "time and a half" concept:

Colo. Laws 1937, c. 113, sec. 4 (a) (c) ("one and one-third times the normal rate"); Order No. 2, for Retail Trade Occupations ("one and one-half times the regular hourly rate"); Nev. Laws 1937, c. 207, sec. 2 ("time and one-half for each said additional hour, computed on their regular wage rates"); N. Car. Code Ann. (1939), sec. 6564 (3) ("one and one-half times the usual compensation for all hours worked over 55"); Okla. Stats. (1931), sec. 10,848 ("double their regular compensation for such excess time"); Ore. Comp. L. Ann. (1940), sec. 102–502 ("time and one-half the regular wage"); Orders State Welfare Comm. ("time and one-half her regular rate of pay" or "the regular rate"); Pennsylvania Rules and Regulations of Department of Labor and Industry, as approved by the Industrial Board with respect to the Women's 44 Hour Week Law, Pa. Stat. (Purdon 1936), tit. 43, sec. 103, (all overtime "shall be paid for at the rate of one and one-half times the regular rate per hour"; "at a rate of at least one and one-half times the regular wage scale for such periods of overtime"); S. Car. Acts 1937,

No. 326, sec. 1, as amended Acts 1939, No. 204, (Sunday work, "on the basis of one and one-half the amount of the usual average day wage or salary earned by such employee during other days of the week"; Acts 1938, No. 943, sec. 2 (c), ("the said employer shall pay the employee for all overtime at the rate of one and one-half the regular wages"); Tex. Stat. (Vernon 1936), art. 5169, 5170, ("double her regular rate of pay for such time as she is employed for more than nine hours per day"); Washington, Rev. Stat. (Remington 1932), sec. 7643, ("one and one-half times the rate of pay allowed for the same amount of time during eight hours' service"); Wis. Stat. (1939), sec. 103.02, ("one and one-half times the regular rates"); Calif. Labor Code (1937), sec. 1182 (b), Order No. 3A of Industrial Welfare Comm. ("one and one-quarter times the time or piece rates paid during regular time"); Order No. 9 ("time and one-half the rate paid in regular time"); Order No. 11A (for night work "rate and one-half of the day rates"). The fact that specification of the basis of computation adds nothing to the familiar "time and a half" is illustrated by Ore. Comp. L. Ann. (1940), sec. 102–323 ("time and a half for time over ten hours a day when employed in canneries or driers or packing plants * * * piece workers shall be paid one and a half the regular prices for all work done during the time they are employed over ten hours per day").

2. State statutes illustrating that "time and a half" has a sufficiently familiar meaning to be un-

derstood without specification of the basis of computation:

> Ariz. Code Ann. (1939), sec. 56–161 (a) ("time and one-half for all time in excess of eight hours"); Ark. Stat. (Crawf. & M. Dig. 1921, sec. 7109 ("at the rate of time and one-half for each hour worked in excess of 9 hours"); N. Mex. Stat. (Supp. 1938), sec. 80–207 as amended, Laws 1939, c. 196, sec. 7; sec. 80–502, 80–504 ("labor in excess of 48 hours * * * shall be paid for on the basis of time and one-half for such excess"); Ore. Laws 1937, c. 360 ("double pay for the overtime so employed"); Wyo. Rev. Stat. (1931) sec. 63–113 ("time and a half for each and every hour of overtime in any one day").

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No. 622

In the Supreme Court of the United States

OCTOBER TERM, 1941

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

A. H. BELO CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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This reply brief will consider: (1) respondent's contention that it is not subject to the Fair Labor Standards Act because some of its employees are not "engaged in commerce or in the production of goods for commerce"; and (2) its further contention that it is exempt under Section 13 (a) (2) as a "service establishment."

1. Respondent contends (Respt. Brief, 72–81) that its "newspaper employees" [1] are not "engaged

[1] Respondent's category "newspaper employees" is used to exclude from the scope of the argument the employees whose activities are necessary to the operation of respondent's

in commerce or in the production of goods for commerce" within the meaning of Section 7 of the Act. In the circumstances of this particular case, we submit that the Court should not exercise its undoubted authority to consider this ground urged in support of the judgment below. The Government petitioned for certiorari herein on the single basis that the decision below had sanctioned a device which permitted emasculation of Section 7 [2] and therefore

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radio station, WFAA; respondent apparently concedes that those employees are "engaged in commerce." Other employees render services to both enterprises; thus reporters gather news locally which is then broadcast from WFAA as well as being printed in respondent's newspaper (R. 373).

[2] On March 20, 1942, subsequent to the filing of our main brief herein, the Circuit Court of Appeals for the Eighth Circuit affirmed *Fleming* v. *Carleton Screw Products Co.*, cited at pages 22, 31, and 39 of our main brief, which held that a somewhat similar device could not be employed to defeat the application of the statute. In that case the defendant sought to maintain its previous work-week without increasing the compensation paid to the employees, most of whom had been receiving hourly rates ranging from 45 to 80 cents, and had been working 50 to 56 hours weekly. The employees signed agreements setting forth agreed hourly rates of pay 10 cents less than they had been receiving, with a guarantee by defendant that if the weekly compensation figured at the "agreed rate" for the statutory work-week plus one-and-a-half times that rate for overtime hours was less than the sum yielded by multiplying the total number of hours by the prior hourly rate, it would pay a "bonus" or "gratuity" equal to the difference. The Circuit Court of Appeals sustained the holding of the District Court that the "regular rate" was not the agreed rate, but the rate yielded by dividing the total compensation paid by the number of hours worked, that is, the hourly rate prior to

presented a question of great importance in the administration of the Act. Although both courts below had rejected respondent's contention that none of its employees were subject to the Act (R. 189, 486), the answer to the petition not only did not mention the coverage question but, on the contrary, affirmatively requested the Court to review the Section 7 issue. This course of procedure afforded a cogent inference that respondent had abandoned the contention (see our Main Brief, note 3, p. 4) and may have led the Court to undertake review of a question which cannot be decided if the abandoned issue may now be reopened and if respondent's position thereon is well taken.

If the coverage issue involved the extent of federal power under the commerce clause, reasons of policy might speak persuasively against holding respondent to the terms of its waiver. But admittedly no question of constitutional power is presented (Respt. Brief, 72–76); the matter is solely one of statutory construction, and that in a comparatively minor field of the Act's operation.

But if the Court wishes to consider the coverage issue, we submit that the Act is plainly applicable here. Respondent is engaged at Dallas, Texas, in the publication of a daily newspaper, *The Dallas Morning News,* and other periodicals, and in the

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the agreement. The court expressly rejected the reasoning of the court below in the present case. Its opinion is reported at 5 Wage Hour Rept. 238.

operation of radio station WFAA (R. 7–8).[3] The newspaper has had, since November 1, 1938, an average daily press run of some 110,000 copies, about 1,850 of which are distributed outside the State of Texas (R. 378–379).[4]

For the material which is published in its newspaper, as well as for the supplies necessary to printing, respondent is substantially dependent upon the channels of interstate commerce. The publication of the paper occasions constant large scale interstate transmission of news and other materials such as features, comics, photographs, and advertising. Respondent is a member of the Associated Press, from which it receives daily news reports and "wire photos" from all parts of the world (R. 373–374).

[3] WFAA is a 50,000-watt station licensed by the Federal Communications Commission and affiliated with the National Broadcasting Company, Inc. It broadcasts national advertising and rebroadcasts programs received from other States, as well as news from abroad and other States, which is delivered to it over the wires of the United Press. Its broadcasts and rebroadcasts are received in States other than Texas (R. 371–373).

[4] Until December 31, 1940, respondent also published the *Semi-Weekly Farm News;* between October 24, 1938, and December 31, 1940, the press run was about 100,000 copies, some 26,000 of which were distributed to subscribers in States other than Texas (R. 379). Between November 1, 1938, and December 1, 1940, respondent published 52,986 copies of the *Texas Almanac and Industrial Guide*, and shipped out of the State 1,704 copies (pltf. ex. 16, R. 108, 379). The employees here involved worked on the three publications without segregation of labor during the period covered by the complaint (R. 382).

News reports are also received daily from the United Press (R. 375). Respondent maintains a news bureau at Washington, D. C., and correspondents at Mexico City, Mexico; from its employees in those cities it receives by mail and wire a steady stream of material for publication (R. 381).[5] Extensive national advertising is placed in respondent's paper through an agency with offices in New York, Chicago, Detroit, San Francisco and Los Angeles (R. 123–124); such advertising constitutes about 18 percent of the paid advertising published by the *News* (R. 379–380). The necessary mats, cuts, and copy for this national advertising are received from outside the State (R. 124, 380–381). Until January 1, 1940, respondent purchased all of its newsprint outside of Texas, and since that date 70 percent (R. 381–382). The *News* uses 12,000 tons of newsprint a year, which arrives at the rate of a carload a day (R. 392, p. 19).

Respondent furnishes to the Associated Press news stories, feature articles and photographs prepared by members of the *News* staff (R. 122). In

[5] Other matter for publication received from outside the State includes news and feature articles from North American Newspaper Alliance, Inc. (R. 375–376); copy and matrices of feature articles and cartoons (R. 376); mats, forms, etc., from various feature syndicates (R. 376–377); copies of a Sunday supplement magazine called "This Week" (R. 377); and matrices and forms for the comic section (R. 377–378).

accordance with its uniform practice,* the press service transmits this material over its wires to its member newspapers within and without the State of Texas (R. 373–374).

Section 7 of the Act provides that "no employer" shall employ "any of his employees who is engaged in commerce or in the production of goods for commerce" for workweeks longer than the number of hours specified unless overtime compensation is paid for the excess hours. Thus the application of the section turns primarily upon the nature of the employee's duties. *Fleming* v. *Arsenal Building Corp.*, 125 F. (2d) 278, 280–281 (C. C. A. 2), pending on writ of certiorari, No. 924, present Term; *Fleming* v. *A. B. Kirschbaum Co.*, 124 F. (2d) 567, 569–570 (C. C. A. 3), pending on writ of certiorari, No. 910, present Term; cf. *Warren-Bradshaw Drilling Co.* v. *Hall*, 124 F. (2d) 42, 44 (C. C. A. 5). Respondent concedes that this is the statutory test (Respt. Brief, 78). It therefore becomes necessary, if the coverage issue is to be disposed of in detail by this Court, to consider the various categories of employees involved and to determine, as to each class, whether its members are engaged either "in commerce" or in the "production of goods for commerce," as broadly defined in Section 3 (j) of the Act.

This process would have to be undertaken here without benefit of pertinent findings by the courts

* See *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 125–127.

below; since both courts found that respondent's employment contracts did not violate Section 7, there was no occasion for an inquiry into which of respondent's numerous employees would be included within an injunction.[7] Since the judgment dismissed the complaint with respect to all employees as to whom violations were alleged, it cannot stand if a single employee is subject to the Act and if Section 7 was violated as to him. In that event the correct procedure, we submit, is a reversal of the judgment below and a remand to the district court for purposes of framing an appropriate decree covering those classes of employees found by the court to be subject to the Act.[8]

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[7] The district court judge stated in his oral opinion "Of course the News is engaged in interstate commerce. It sends its papers everywhere. It receives supplies and news from abroad. It is a great institution. Radio is interstate commerce * * *" (R. 189). The Circuit Court of Appeals stated that "On the jurisdictional point, the testimony was sufficient to support the finding that defendant, as to the employees in question, was subject to the act" (R. 486).

[8] Respondent's bald statement that since the injunction requested in the complaint is applicable to all of its employees it "is not sustainable unless all are actually engaged in interstate commerce" (Respt. Brief, 78, 72) is unsupported by any authority and is intrinsically unsound. Courts have and exercise jurisdiction to grant in part and deny in remainder relief sought. Respondent's position is that if there were a failure of proof with respect to a single employee, but convincing proof with respect to hundreds of others, the injunction must nevertheless be denied *in toto*. The Government is not asking this Court to "sustain" an injunction

A number of employees covered by the complaint are within the scope of the Act. Respondent does not deny that the employees engaged in operation of its radio station are "engaged in commerce" (see Respt. Brief 72), and it is clear that they are. Station WFAA receives from other states, and rebroadcasts programs and news, and participates in nation-wide "hook-ups"; its broadcasting is heard in other states (R. 371–373). All employees whose work contributes to the operations of the station are engaged in commerce. *Fisher's Blend Station, Inc.*, v. *State Tax Commission*, 297 U. S. 650–655; *Federal Radio Commission* v. *Nelson Bros. Bond & Mortgage Co.*, 289 U. S. 266, 279; *Fleming* v. *Capital Broadcasting Co.*, 4 Wage Hour Rept. 124 (M. D. Ala. 1941).[9] And employees engaged in

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issued below; it seeks reversal of a judgment denying an injunction and dismissing the Administrator's complaint with respect to all employees as to whom an injunction was sought.

[9] Employees Brown, Ellis, and Wicker work in the control room of the radio station, "feeding" programs from the studio to the transmitter, regulating the volume, and otherwise controlling the mechanics of the broadcast (R. 109, 111, 125–126). Alderman and Hartzell are announcers (R. 108, 110). DeHay receives and schedules the programs (R. 109). Kuehn "clears" programs and music for broadcasting (R. 110). Martin rewrites news bulletins for presentation over the air (R. 110). The employment arrangement whose validity is challenged by the complaint is in effect as to these employees, as well as to all employees other than linotypers, pressmen, and others in the printing departments, who are covered by union agreements (Main Brief, note 4, p. 5).

the unloading of newsprint and other materials which move to respondent's plant from points in other states are as plainly "engaged in commerce" *Baltimore & O. S. W. R. R.* v. *Burtch*, 263 U. S. 540, 544; *Puget Sound Co.* v. *State Tax Commission*, 302 U. S. 90, 92; *Super-Cold Southwest Co.* v. *McBride*, 124 F. (2d) 90, 92 (C. C. A. 5).[10]

The same conclusion is indicated with respect to employees in the addressing and wrapping departments and those engaged in carting to the Post Office the papers and mail, including the large number of pieces addressed to destinations in other States.[11] Employees in the bookkeeping department receive the copy of national advertising, schedule its appearance in the *News* on the proper date, and bill the out-of-State advertiser (R. 124, 392, p. 4). These employees and others engaged in arranging for, purchasing, procuring, or receiving

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[10] Mountique, Fair, and Burleson, employees in respondent's paper room, are engaged in receiving newsprint at the plant (R. 67-68, 135).

[11] Four employees in the stencil department operate the machines which print the names of subscribers on the wrappers (R. 392, p. 7). Conkle, Morrow and other employees in the mail room wrap newspapers for delivery through the mails (R. 68-69, 137, 392, p. 6). More than 3,000 sacks of mail a year, including the newspapers, are carried to the Post Office by the truck drivers (R. 69, 392, p. 6). Mrs. Lovell, Newnam, Martin and numerous other employees are engaged in handling incoming and outgoing letter mail (R. 72, 125, 129). A special post office maintained within the building requires the services of three or four employees (R. 392, p. 5).

materials, features, and advertisements and news sent to respondent from other States, are "in commerce." *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 128; *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 107; *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282, 290; *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50, 54; *Federal Trade Commission* v. *Pacific States Paper Assn.*, 273 U. S. 52, 63–64; *Cleveland & St. Louis Ry.* v. *Dettlebach*, 239 U. S. 588, 595.

The remaining employees engaged in publication of respondent's newspaper may well also be found to be "engaged in commerce." The enterprise of which they are part maintains a continuous stream of interstate communication and transportation to Dallas and from Dallas to similar enterprises throughout the Nation (*supra*, pp. 4–6). These activities "involve the constant use of channels of interstate and foreign communication. They amount to commercial intercourse, and such intercourse is commerce within the meaning of the Constitution.", *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 128. See also *Indiana Farmer's Guide Publishing Co.* v. *Prairie Farmer Publishing Co.*, 293 U. S. 268; *International News Service Co.* v. *Associated Press*, 248 U. S. 215, 229; *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*, 96 U. S. 1, 9–10; *National Labor Relations Board* v. *A. S. Abell Co.*, 97 F. (2d) 951 (C. C. A. 4); *National Labor Relations Board*

v. *Hearst*, 102 F. (2d) 658 (C. C. A. 9); *Press Co.* v. *National Labor Relations Board*, 118 F. (2d) 937 (App. D. C.). And there can be no doubt that such activities constitute "commerce" within the meaning of the Act; Section 3 (b) broadly defines that term to include "transmission, or communication among the several States."

Finally, all employees who are engaged "in any process or occupation necessary to the production" of respondent's newspaper are likewise engaged "in the production of goods for commerce" as broadly defined in the Act (Secs. 7, 3 (j)). Cf. *Philadelphia B. & W. R. R. Co.* v. *Smith*, 250 U. S. 101, 103. The 1,800 copies of respondent's newspapers which are daily sent across State lines are goods of commercial value and constitute a substantial amount of interstate commerce by any standard. And the constitutional basis of regulation being firmly established, respondent's comparison of the intrastate and interstate circulation upon a percentage basis is relevant "only to the extent that Congress may be taken to have excluded commerce of small volume from the operation of its regulatory measure by express provision or fair implication." *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 607. There is no warrant for inference of such an intent.[12] This Court has recognized

[12] The Act has been held applicable to certain employees in the following cases where only a small percentage of the employer's business was interstate in character; *Muldowney*,

that, in framing the act, Congress "has made no distinction as to the volume or amount of shipments * * *." *United States* v. *Darby*, 312 U. S. 100, 123. The purpose of the Act was to free the channels of interstate trade from goods produced under substandard labor conditions; Sec. 15 (a) (1), significantly, forbids the shipment in commerce of "any" goods so produced. Cf. *Hipolite Egg Co.* v. *United States*, 220 U. S. 45; *United States* v. *Thirteen Crates of Frozen Eggs*, 215 Fed. 584 (C. C. A. 2).[12]

The breadth of the statutory definitions of "commerce" and "produced" (Sections 3 (b), (j)) affords a cogent answer to respondent's contention that the Act is inapplicable because of the absence of the phrase "affecting commerce" (Respt. Brief, 72–73, 75–76). Neither the stated purpose of the

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v. *Seaberg Elevator Co.*, 39 F. Supp. 275 (E. D. N. Y.) (0.2%); *Cooper* v. *Gas Corp. of Michigan*, 4 Wage Hour Rept. 550 (C. C. Mich. Mason Co. 1941) (0.56%); *Steger* v. *Beard & Stone Elec. Co.*, 4 Wage Hour Rept. 411 (N. D. Tex. 1941) (1%); *Schwartz* v. *Independent Food Products Co.* (D. N. J.), May 13, 1941 (1.5%); *Campbell* v. *Superior Decalcominia Co.*, 31 F. Supp. 663 (N. D. Tex.) (3%); *Fleming* v. *Hitchcock*, 38 F. Supp. 358 (S. D. Fla.) (16%); *Wood* v. *Central Sand & Gravel Co.*, 33 F. Supp. 40 (W. D. Tenn.) (15–20%).

[12] In recommending enactment of a wage and hour statute, the President advised Congress that goods produced under substandard labor conditions "should be regarded as contraband and ought not to be allowed to pollute the channels of interstate trade." House Document No. 255, 75th Congress, 1st sess., p. 3.

Fair Labor Standards Act, nor the terms of the regulation it imposes, nor its legislative history, lend weight to a contention that, unlike the National Labor Relations Act, it does not evidence "the intention of Congress to exercise whatever power is constitutionally given it to regulate commerce." *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 607.[14] The congressional debates were cast in terms of the extent of constitutional power to regulate wages and hours in view of apparently conflicting decisions of this Court; the premise that the proposed legislation reached the limits of that power was assumed.[15] See, *e. g.*,

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[14] Both statutes seek to eliminate specified evils found by Congress to burden and obstruct commerce. Unfair labor practices by employers were declared in the National Labor Relations Act to "lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce"; the elimination of such practices was sought because it "promotes the flow of commerce by removing certain recognized sources of industrial strife or unrest * * *." (49 Stat. 449, 29 U. S. C. sec. 151). In section 2 of the Fair Labor Standards Act, Congress stated that the production of goods under substandard labor conditions "burdens commerce and the free flow of goods in commerce" and "leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce."

[15] The sole exception to this statement concerns regulation of production for exclusively intrastate sale or consumption of goods which compete with goods brought into the State in interstate commerce. Cf. *Federal Trade Commission* v. *Bunte Bros.*, 312 U. S. 349; *Shreveport Case*, 234 U. S. 342. A provision specifically extending the bill to such activity (S. 2475, 75th Cong., 2d sess., as recommitted

83 Cong. Rec. 9166 ff.; *Joint Hearings before the Committee on Education and Labor, United States Senate, and the Committee on Labor, House of Representatives on S. 2475 and H. R. 7200* (75th Cong., 1st sess.) pp. 1–14, 19.[16]

2. Respondent contends (Respt. Brief, 82–84) that employees of newspaper publishers whose circulation is predominantly intrastate are exempt from the Act as employees "engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce" (Section 13 (a) (2)). The short answer is that this construction of "service establishment" renders entirely meaningless the specific exemption, in another subdivision of the same section, of persons "employed in connection with the publication of any weekly or semiweekly newspaper with a circulation of less than three thousand the major part of which circulation is within the county where printed and published" (Section 13 (a) (8)). Respondent's subordination of this "inferential inclusion" of other types of newspapers to the "express

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Dec. 17, 1937, sec. 8 (a)) was dropped from an intermediate draft by the House Committee (S. 2475, 75th Cong., 3d sess., as reported April 21, 1938; H. Rept. 2182).

[16] Senator Borah was of the opinion that a newspaper which shipped only 20 or 30 copies outside of the State was subject to the proposed statute (83 Cong. Rec. 9172). And Senator Wagner stated that the scope of the bill was as broad as that of the National Labor Relations Act (83 Cong. Rec. 9173).

exclusion of service institutions" assumes that newspapers are *ipso facto* "service establishments." Whatever the validity of such an assumption as a general proposition—and respondent offers no authority—it seems likely that in the context of Section 13 (a) (2) "that phrase should be limited to those who serve consumers directly, like tailors, or garages, or laundries; the juxtaposition of retail selling and 'servicing' does indeed suggest as much.". *Fleming* v. *Arsenal Building Corp.*, 125 F. (2d) 278, 280 (C. C. A. 2), pending on writ of certiorari, No. 924, present Term; see also *Fleming* v. *A. B. Kirschbaum Co.*, 124 F. (2d) 567, 572–573 (C. C. A. 3), pending on writ of certiorari, No. 910, present Term.[17]

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[17] The scope of the "service establishment" exemption is before the Court in the *Kirschbaum* and *Arsenal* cases. See Memorandum for the Respondent, No. 910, p. 2. In Interpretative Bulletin No. 6, revised June 1941, par. 24, the Administrator stated that "Typical examples of service establishments akin to retail establishments, within the meaning of the exemption are: Restaurants; cafeterias; roadside diners; hotels; tourist houses; trailer camps; home laundries; barber shops; beauty parlors; public baths; scalp-treatment establishments; masseur establishments; funeral homes; embalming establishments; crematories; establishments engaged in cleaning, dyeing, pressing, altering, and repairing hats, clothing, and household goods for private individuals; valet shops; shoe repair shops; shoeshine parlors; dress-suit rental establishments; public garages; automobile laundries; 'drive it yourself' establishments; battery shops; parking lots; musical instrument repair shops; piano tuning establishments; radio repair shops; watch, clock, and jewelry repair establishments; household refrigerator service

Respectfully submitted.

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and repair shops. These establishments operate in the same manner as retail establishments and have substantially the same attributes. The principal difference is that their revenue is derived primarily from the sale of service instead of from the sale of merchandise." The scores of industries whose members have claimed the benefit of the exemption but which were not deemed sufficiently similar to the retail establishments with which they are grouped in Section 13 (a) (2), are enumerated in paragraph 29 of the bulletin.

U. S. GOVERNMENT PRINTING OFFICE: 1942

No. 622

In the Supreme Court of the United States

OCTOBER TERM 1941

PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

A. H. BELO CORPORATION

POSITION OF RESPONDENT WITH RESPECT TO THE PETITION FOR CERTIORARI HEREIN.

CITATIONS

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POSITION OF RESPONDENT WITH RESPECT TO THE PETITION FOR CERTIORARI HEREIN.

Respondent deems it desirable that certiorari be granted herein in order that a fanciful and dangerous construction of the Wage and Hour Act urged by petitioner herein may be rejected by the final authority of this court.

This case reaches this court at a time when the national welfare calls for every ounce of productivity that is in us. Yet petitioner asks this court to give sanction to a construction of the Act which is designed to "discourage" overtime work and so to limit work to forty hours a week, all considera-

tions of health, pay and well being of workers aside.[1]

Admittedly petitioner's attack upon the decision below stems solely from a desire to sustain a construction of the Act which will accomplish such design.

Prior to the Act respondent's editorial employees received weekly salaries for work which necessarily required fluctuating hours and overtime service. Such salaries were more than sufficient to satisfy the minimum standards of the Act when converted into hourly rates of pay. This was true whether the conversion be upon the minimum basis of one and one-half to one for the overtime hours or upon a higher than minimum basis of two to one or greater. The employees desired to retain the obvious benefits of uniformity of pay incident to the salary system. So the problem of compliance with the Act so far as respondent and its employees were concerned was merely the problem of converting the salary arrangement into hourly rates of pay, allocating the total pay between regular time and overtime in such wise as not to violate the prescribed minimum for regular time hours and the prescribed ratio of at least one and one-half to one for the overtime hours. The contracts in question made such an allocation, so much to regular time hours, based upon agreed

[1]Such design is best represented by a recent decision of a district court in Ohio, Williams v. General Mills, Inc., infra, where petitioner's theory is accepted in full flower.

regular rates of pay varying as to different employees from the minimum of 30¢ to over $1.00, and the balance to overtime hours, with provision for added payments whenever such balance was insufficient to cover all the overtime hours at the prescribed minimum ratio of one and one-half to one.

Thus pre-existing salary arrangements were adapted to the scheme of the Act by giving formal recognition, in terms of express ratio of pay, to a distinction between regular time pay and overtime pay which really already existed, though not in explicit terms, in the salary arrangements of respondent.[2]

The contracts in question do not present any question of substituting an "arbitrary" rate of pay for the "regular rate" specified in the Act, as claimed at page 2 of the petition for certiorari, or the use of an "arbitrary" divisor or "arbitrary" figure for regular rate of pay, as claimed at pages 4 and 7 of the petition, or any question of "evasion" of the Act, as claimed at page 9 of the petition, or the employment of any contractual "device" as claimed at page 10 of the petition.[3]

The issues suggested by the mentioned words, "arbitrary," "evasion," and "device," resolve themselves into fact questions which are forever settled by the harmonious findings of the courts below that "the contracts between employer and

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[2]See Note 6, page 8.

[3]See the findings of fact at R. 185-189 and 485-496.

employee were actual bona fide contracts of employment" (R. 488); that the contracts "were intended to, and did, really fix the regular rates at which each employee was employed" (R. 488); that the contracts were "real contracts for employment," not "fictitious," not "pretense" (R. 488); that "desiring to maintain and continue a system of fixed and regular weekly salaries in strict and full compliance with the Fair Labor Standards Act, employer and employees freely and voluntarily entered into agreements having that effect" (R. 494); that the "agreements fixed the regular rate of pay at which each was employed" (R. 494-495); that the agreements "are actual deliberate contracts intelligently made, and not mere bookkeeping or a scheme to evade" (R. 496); and that the guaranty provision of the agreements "is for the protection and benefit of the employee, the needs for whose living are constant whether his weekly work is or not * * * is made in good faith in the exercise of the right of free contract * * * it does not spoil the other terms of the contract and result in unintended liabilities that are inconsistent with the contract" (R. 496).

Petitioner does not claim that the contracts in question fail to satisfy all the objectives stated in the Act, i.e., maintaining a proper standard of health, pay and well being of the employees. If such are the objectives of the Act and if the language of the Act is to be construed in the light of

such objectives alone, the petitioner would concede that no law violation exists.

But petitioner finds a new and astonishing objective, not stated in the Act, for which court sanction is sought by the filing of petition for certiorari herein. Such supposed objective goes far beyond any congressional purpose as expressed in the Act itself or in the debates in Congress or in any public utterance of the proponents of the Act.

Worse, such supposed objective is square in the face of the needs of national defense upon which our very existence as a free people depends.

Such supposed objective is to discourage or prohibit work of over 40 hours a week, with design to "spread" employment, although the Nation's interest cries for more production, more work and longer hours, to the fullest possible extent consistent with maintenance of the standards of health and pay prescribed by the Act, and although admittedly, as in this case, no relationship exists between the design to reduce hours, on the one hand, and on the other hand, maintenance of the minimum labor standards with which the Act is concerned.*

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*Since the Act does not purport to be an emergency measure its objectives are to be tested in the light of permanent statesmanship for unlimited time. Congress was bound to know that periods of scarcity of labor, like the present, are to be expected no less than periods of unem-

The astonishing result of all out adoption of petitioner's construction is represented by a recent case from a district court in Ohio, not yet reported in Federal Supplement, *Williams v. General Mills, Inc.*, 4 Wage Hour Rept. 421, cited at page 9 of the petition for certiorari as presenting a conflict with the decision below.

In that case the employees, when the Act went into effect, were given the option of working 40 hours per week at 60c per hour or 56 hours per week at 52½c per hour for the first 40 hours and time and one-half for the added 16 hours. They chose the latter because such arrangement resulted in $9.60 added pay per week. Although, admittedly, such choice did no violence to the social objectives of the Act, and although, admittedly, as the court said, "very few men who have studied the problem contend that forty-eight hours or more of labor per week are detrimental to health," and although, admittedly, the pay received of 52½c an hour for the first 40 hours and time and one-half thereafter was far in excess of the minimum standard for health and well being expressed in the Act, such choice of longer hours was held to be "against public policy;" and the workers were

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ployment. Is it possible that Congress could have desired to limit work to forty hours for all time, whatever the national interest to the contrary? Is it possible that Congress would have done so without giving voice to such an objective somewhere in the Act?

actually condemned by the court as engaging in "a conspiracy between the men and the company against an Act of Congress—the men conspired to keep others out of work and the company to refrain from paying higher wages." This, as the court said, because "the big objective" of the Act is to "give work to more men—thus cutting down unemployment in general."

When the shortage in skilled labor is already critical, and when the true need is to find men, not work, the petitioner, and the Ohio court following petitioner's lead, find a "public policy" in the Act which forbids work of over 40 hours.

If 60 hours may be assumed to be a maximum that may be worked at utmost efficiency and without injury to health, the effect of petitioner's construction is to reduce our capacity for production by exactly one-third.

Unless the decision in the General Mills case is corrected on appeal to the Circuit Court of Appeals, it is important that it be repudiated by decision of this court at first opportunity.

The national interest requires no less.

Validity for the supposed objective of spreading work or the construction adopted by petitioner to accomplish such purpose is not to be found in the fact that petitioner conceives that such objective exists and applies such construction in administering the Act. This would be so even if peti-

tioner's construction of the Act in this respect had been more consistent than it has.[5]

Administrative action which supplies deficiencies or plugs holes in language in order to achieve a stated purpose of Congress is one thing. Administrative action which adds to the announced purposes of Congress some new and different objective, not expressed in the Act or even in the arguments of proponents of the Act, is another thing. However much effect may be given to administrative action of the first type, no warrant exists for attributing any consequence at all to action of the second type.

The technique by which petitioner applies his supposed objective of the Act is no less disrupting. His method is to force a dilemma upon employer and employees either to pay much higher wages after the Act than before for the same work, however sufficient the pay before the Act to satisfy all minimum standards and however implicit in such pay the maintenance of ratio of one and one-half to one for overtime hours,[6] and however

[5] See Missel v. Overnight Motor Transportation Co. (DC Md. 1941), 40 Fed. Supp. 174, pointing out prior inconsistent positions in this respect taken by petitioner and his predecessor in office.

[6] The Wage and Hour Act did not discover the relationship of one and one-half to one for overtime pay. Such relationship is so well settled as a long standing employment practice in American industry that it would seem that such relationship is implicit in most salary arrangements, whether or not the more than proportional addition to salary for anticipated extra long hours be expressed in the employment agreement in so many words.

impossible it may be for the employer to pay more, or, on the other hand, to cut the work week to 40 hours. Any escape from the dilemma is barred by petitioner's formula for ascertaining regular rate of pay. Such formula is offered as a substitute for pre-determination of rates of pay and precludes advance estimate of what will be due. Such formula requires that regular rate of pay be determined *after* the work is done by dividing the number of hours worked into the salary paid. Such ex posto facto determination of rate of pay must be employed even when it is not known, and cannot be known, whether the work will be so regular that the divisor will be uniform,[7] or whether the hours worked will be so irregular that a different divisor must be used for each week.[8]

Further, such formula, in distributing the total pay evenly among all the hours worked, assumes a per hour uniformity in compensation which is opposed to reality and actual intent of the parties, as well as their express agreement.

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[7] See Interpretative Bulletin No. 4, par. 11 (R. 399), for the method of computation when the number of hours worked is "regular."

[8] See Interpretative Bulletin No. 4, par. 12 (R. 399), for the method of computation when the number of hours worked is "irregular" or "fluctuating." Note the impossibility of determining as to work to be done in the future whether the weeks of fluctuating hours will be so few that the work will be deemed to be "regular hours," or so many that the work will be deemed to be "fluctuating hours."

Small wonder that petitioner's construction of the Act and technique of applying such construction, resulting, as it may, in bankruptive claims of liability, causes uncertainty and fright.

Except for the General Mills case, already mentioned as representing 100% adoption of petitioner's claim, and a similar decision from a district court in Georgia, *Fleming v. The Atlantic Co.*, 4 Wage Hour Rept. 353,[9] the cases cited in the petition for certiorari as presenting a conflict in decision are of three types, each quite distinguishable from the case at bar: (a) cases where the employment agreement clearly allocated salary payments to regular time, leaving the overtime uncompensated;[10] (b) cases where admittedly no agreement existed between employer and employee for allocating salary payments between regular time and overtime work and the court was faced with the necessity of making its own allocation;[11] and (c) cases where an agreement was

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[9]The opinion in this case, however, was withdrawn by the court on September 20, 1941, after preparation of the petition for writ of certiorari herein, and new opinion filed upholding the employment contracts in question.

[10]See Klotz v. Ippolito, S. D. Texas, July 21, 1941, 4 Wage Hour Rept. 444, cited at page 9 of the petition.

[11]See St. John v. Brown, N. D. Texas, 38 Fed. Supp. 385, cited at page 9 of the petition, where the court said: "Plaintiffs insist if, what defendants were paid can be allocated so as to cover the statutory minimum for the statutory maximum hours and, in addition, one and one-half for all overtime, that such a salary meets the requirements of

claimed by the employer to exist but circumstances of fraud or overreaching or duress or pretense rendered the agreement fictitious and without force.[12]

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the law. The proposition seems very plausible, but, *unless such was an arrangement agreed to by the parties*, my conclusion is, it is not a compliance * * * It is not enough that the salaries here, *independent of the working contract*, may be allocated or spread so as to have the minimum and one-half for overtime * * * The key to the right answer is the true per hour wage of the employee. *That must be determined, of course, by reference to the actual employment contract.*"

[12]See Fleming v. Carleton Screw Products Co., D. C. Minnesota, 37 Fed. Supp. 754, cited at page 9 of the petition. In such case it appeared that the employer was a manufacturer, whose employees worked regular shifts on an hourly pay basis without overtime pay before the Act went into effect. After the Act went into effect the employer reduced the hourly rate by 10c, a level reduction as to all employees, without distinction, and thereafter overtime was paid on the basis of the reduced rate, with agreement to maintain the total pay at the same figure as if the employee had worked at the previous hourly rate without overtime. Such plan was adopted by agreement but over the protest of some hostile employees. It was, therefore, not a case of converting a salary system into an hourly wage system, or a case where the objective was to maintain uniform weekly pay in spite of fluctuating hours to conform to the desires of employees, or a case of joint action and harmony of employees and employer. It was a case of continuing an already existing hourly wage system which already produced uniform total pay, without payment of overtime. Moreover, there was affirmative testimony from employees that "we really did not get a cut; it was only on the books we got the cut." Indeed, the court found that the agreements were signed by employees only after representations by the employer that

For the reasons mentioned, respondent urges that certiorari be granted herein to end, once and for all, the disruptive consequences of petitioner's claim.

Respectfully submitted,

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September, 1941.

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amounted to a mild type of duress and that, in addition, such assurances were given that the previous hourly rate of pay would remain in effect in spite of the new plan that the true arrangement remained as before and the new rates were mere "artifice." Moreover the plan as submitted to the employees did not allocate any portion of the pay to overtime. Instead, the full pay was allocated to bring the total payment up to what the employee "had theretofore received at his straight time hourly rate." Thus the court was faced with substantially the same question as in the St. John case of what to do when the parties themselves have failed to agree upon an allocation between regular time and overtime.

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No. 622

In the Supreme Court of the United States

October Term, 1941

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

A. H. BELO CORPORATION, RESPONDENT

BRIEF FOR RESPONDENT

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In the Supreme Court of the United States

October Term, 1941

No. 622

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

A. H. BELO CORPORATION, RESPONDENT.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR RESPONDENT

OPINIONS BELOW

The opinion of the district court (R. 185-189) is reported in 36 F. Supp. 907. The opinion and concurring opinion in the circuit court of appeals (R. 485-496) are reported in 121 F. (2d) 207.

JURISDICTION

The judgment of the circuit court of appeals was entered on June 27, 1941 (R. 497). The petition for writ of certiorari was filed on September 16, 1941, and granted on October 27, 1941 (R. 498). The jurisdiction of this court was invoked under section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

I.

Petitioner's Statement of Question Presented	Respondent's Revision of Petitioner's Statement

(Matter appearing in one column but not in the other printed in heavier faced type.)

Prior to the enactment of the Fair Labor Standards Act the respondent paid its employees fixed weekly salaries.	Prior to the enactment of the Fair Labor Standards Act the respondent paid its employees fixed weekly salaries. **The necessities of respondent's business were such that (with rare exceptions) all employees here involved worked fluctuating hours requiring overtime service every week.**
In anticipation of the Act, it made	In anticipation of the Act, it made
so-called[1] agreements with each of its employees	agreements with each of its employees **which, on undisputed evidence, both the District Court and the Circuit Court of Appeals have factually found are genuine and real, deliberately entered into and continuously carried out in good faith by both employer and employee,**[2]
setting forth an hourly "basic rate of pay"	setting forth an hourly "basic rate of pay" **for the first forty-four hours of work**

[1] Contrast the characterization here used, "so-called," with the admissions expressed and implied in petitioner's brief (pp. 38, 12) that the agreements are "bona fide," free of "fraud or duress," free of "dishonest intent" and are "a legally binding contract with its employees."

[2] See Findings (R. 488, 494-495, 496) that the contracts were "actual," "bona fide," "real," not "fictitious," not "pretense," and "actual deliberate contracts intelligently made, and not mere bookkeeping or a scheme to evade."

(generally equal to one-sixtieth of the weekly salary),	(generally equal to one-sixtieth of the weekly salary, **but with appropriate variation of the fraction in individual cases in consequence of particular conditions)**
(Note that petitioner's statement wholly omits any reference to the overtime provisions of the agreements)	**and as to overtime,**
	providing for the payment for each hour thereafter of compensation at a rate not less than one and one-half times such basic rate,
together with a guaranty that **in any event the compensation would not be less than the prior weekly salary.**	together with a guaranty that **his total compensation "for regular time and for such overtime as the necessities of the business may demand" should be not less than a stated figure which was equal to or greater than that which he theretofore had received each week.**
THE QUESTION IS WHETHER,	THE QUESTION IS WHETHER,
in computing overtime compensation (at time and one-half),	in computing overtime compensation (at time and one-half)
the **arbitrary**[3] hourly rate specified	the hourly rate **thus** specified
in each employee's agreement	in each employee's agreement **for the first forty-four hours of work**
is the "regular rate at which he is employed" under Section 7 of the Act.	is the "regular rate at which he is employed" under Section 7 of the Act,

[3] **The word "arbitrary" is brought to the front by petitioner for the first time in his brief in this court. In the District Court and brief in Circuit Court of Appeals he used the characterizing words "fictitious," "pretense," "device" and "subterfuge," to which the findings referred to in note 2, supra, are responsive.**

OR WHETHER

the stipulated allocation to the first forty-four hours of work of a definite hourly wage and the stipulated allocation to overtime hours of the higher and all additional compensation included in the guaranty must be disregarded by this court

and

the factual determinations by District Court and Circuit Court of Appeals aforesaid must be likewise disregarded by this court

and

the whole of the guaranteed weekly total compensation for the first forty-four hours and for overtime must be deemed by this court as if distributed at a uniform hourly rate for all hours worked

and

the "regular rate of pay" thereupon must be declared by this court to be the quotient obtained by dividing the total number of hours worked each week into the total of the guaranteed total weekly compensation[4]

with result that

an increased "regular rate" of pay will be deduced as a basis in turn for deducing an increased overtime rate of pay, and as a basis in turn for de-

[4] This is the only method of computation mentioned in petitioner's brief as a demanded substitute for the contract rates of pay. But Interpretative Bulletin No. 4 stipulates a different method of computation to be applied when the hours from week to week are more or less uniform (the exact degree of uniformity not specified), in which case the divisor is the uniform hours, even in weeks of variation from the uniform, instead of the total number of hours worked. Petitioner's expert computator applied such different method to some employees in this case, in his testimony in the trial court (R. 167-169).

claring the employer in default in his payments to employees for both regular time and overtime

and practical results: pre-determination of rates of pay or of total compensation becomes impossible; uniformity of pay from week to week becomes impossible; both regular and overtime rates become smaller as the hours worked become longer; the overtime rate instead of "not less than" one and one-half becomes exactly one and one-half; employment arrangements preferred by employees and employer-employee amicability based thereon become disrupted; certainty of what is to be paid and received becomes uncertainty, depending on fluctuating application of petitioner's Interpretative Bulletin, and decision of court and jury, and such uncertainty becomes a cumulatively mounting dollar threat, jeopardizing the solvency and existence of the employer.[5]

II.

Whether the overtime provisions of the Act, if applied in the circumstances of this case to require wage payments in excess of the amounts contracted for, are

[5]The argument advanced to induce and compel this Court so to disregard the contract and the factual findings of District Court and Circuit Court of Appeals is that the Wage and Hour Administrator has issued "Interpretative Bulletins" claimed by him to set forth the aforesaid as his interpretation of "regular rate" of pay as used in the Act, notwithstanding admittedly Congress has granted him no authority to issue any regulation defining "regular rate" of pay, and his claimed interpretation is designed purposely to achieve the objective of shortening hours or increasing pay even though the wage standards are in excess of those prescribed by the Act, with ultimate goal of curtailing hours of work, although such goal is not declared or specified in the Act as an objective.

within the power of Congress under the Commerce Clause of the Constitution of the United States and not violative of the due process provision of the Fifth Amendment. Whether petitioner's construction of the Act would not encounter serious constitutional obstacles.

III.

Whether respondent's newspaper employees are "engaged in commerce or in the production of goods for commerce" within the meaning of Section 7 of the Act.

IV.

Whether respondent's employees are "engaged in" a "service establishment the greater part of whose * * * servicing is in intrastate commerce" within the meaning of the exemption contained in Section 13(a) of the Act.

STATUTES INVOLVED

The relevant provisions of the Fair Labor Standards Act (52 Stat. 1060, 29 U. S. C. §201 et seq.) are set forth in the Appendix volume.

STATEMENT OF THE CASE

Petitioner's statement of the case omits so much of importance to the full understanding of the case that it becomes necessary to submit a substitute statement as follows:

Respondent is publisher of the Dallas Morning News, daily and Sunday, and Texas State Almanac and Industrial Guide, at irregular intervals usually every other year, and owner and operator of radio station WFAA and half owner of radio station KGKO. Since respondent's interest in KGKO is merely a stock

interest, KGKO employees are not involved in this suit. Prior to December 31, 1940, respondent was publisher of a semi-weekly farm paper known as Semi-Weekly Farm News, but such publication was discontinued on December 31, 1940 (R. 28).

Respondent employs 461 employees in its publishing activities and 51 in its radio activities, exclusive of officers and department managers. Of the newspaper employees 130 are employed in mechanical departments and are covered by collective bargaining contracts with the typographical, stereotyper's and pressmen's unions. Such employees are not involved in the questions here presented. Unless otherwise noted, this brief relates to the other newspaper employees and the radio employees, 382 in number (R. 77, 149-153, 441).

Such employees work on a continuing employment basis. Their number does not include any casual or part-time or temporary employee. Thus, of the total number of employees, including those in the mechanical departments, 100 have been continuously employed by respondent over twenty years, 70 from fifteen to twenty years, 85 from ten to fifteen years, 118 from five to ten years, and 86 from three to five years, leaving only 53 whose employment has continued for less than three years (R. 95).

Necessarily, in a business serving the public, regularly for seven days a week and for longer hours each day than the usual, and irregularly for still longer hours, such as radio and newspaper, the employees work fluctuating hours involving overtime service. The only exceptions to the rule of fluctuating hours are the few employees who can work in regular shifts, such

as night watchmen, PBX operators and janitors, and some women employees as to whom special arrangement was made to provide regularity of hours (R. 496, 63-64, 194-337).

Prior to October 24, 1938, the effective date of the Act, respondent and its employees had worked out a satisfactory set of employee arrangements, developed through the years in the light of the continuing nature of the employment and the necessity of fluctuating hours, as follows:

(1) Employees received a uniform weekly salary—a guaranteed amount 52 weeks a year which they could count on, in slack periods as well as busy periods, in sickness as in health, in old age as in prime (R. 31, 38, 41, 82-83, 86); save for a few office boys and colored janitors all salaries when translated into hourly rates of pay were and long had been above the minimum prescribed by the Act (R. 38, 187, 339);

(2) Employees received regular vacations of approximately two weeks a year, at full pay (R. 78, 98-99, 140, 442-456);

(3) Employees received special bonuses at year end as a special reward for faithfulness, amounting, in recent years, to approximately one week's earnings (R. 82, 98-99, 442-456);[6]

(4) Employees received full pay during periods

[6] Petitioner selected 48 employees from the entire payroll for sample evidence presentation purposes. As to such employees petitioner chose one week in each month after October 24, 1938, sometimes more, sometimes less, for noting of hours worked and wages received on wage computation sheets at R. 194-337. As to 46 of these same employees (2 being inadvertently omitted) and for the same period of time, respondent produced evidence at R. 442-456 of other weeks of vacations, bonuses and illness with pay. For the 46 employees the aggregate number of working days taken off with full pay from October 24, 1938, to December 31, 1940, was 1,792.

of illness, sometimes continuing week after week, and month after month, and of absence from work on personal matters (R. 78-79, 98-99, 442-456);

(5) When employees grew old or incapacitated to do a full schedule of work, they were nevertheless retained in employment at full rates of pay; at the time of trial 28 superannuated employees were being carried on the payroll at full rates; $64,360.00 was paid to them during 1940 (R. 79, 80);

(6) Employees were permitted rest periods and absences for personal affairs without other restriction than their own sense of duty and without keeping time and without deduction from pay (R. 64, 83, 93, 98-99, 442-456);

(7) Whenever an employee was required to work unusually long hours in any week he was given compensating time off in the next week or as soon thereafter as possible; such time off arrangement was continued after the Act went into effect and after overtime compensation was paid for the long week (R. 90-93);

(8) Life insurance was carried for employees at respondent's expense (R. 60, 180);

(9) The employees, in turn, were loyal and devoted, comprising what was known both in the language of employees and the management as "the News family" (R. 33-34, 38, 41, 83-84, 459-461, 86, 93-94, 180, 181-184).

The result of such employee arrangements was satisfaction on the part of employees as well as good wages and steady wages.

When it became known that the Act would go into effect October 24, 1938, respondent determined to

bring its employee arrangements into harmony with the Act. At the same time it was desired to preserve the advantages of the existing employee arrangements as nearly as may be. Indeed, the employees were urging respondent to make no change (R. 83). Respondent sought legal advice to ascertain how all requirements of the Act could be satisfied without unsettling the amicability that existed. And all that respondent did thereafter was done with the advice and approval of its attorneys (R. 37-39, 46, 85-87).

Respondent was advised by its attorneys that it was necessary to install a system for keeping full records of hours and wages, and to raise the few lowest paid employees to at least the legal minimum, and to convert the salary system into an hourly wage system, so that it would be possible to know at all times that payment for overtime was at a rate of at least one and one-half times the payment for regular time; that the Act seemed to contemplate a fixation of pay for regular hours but a permitted variation of pay for overtime hours ("not less than"), and hence it seemed unnecessary to discard the system of uniform weekly pay and of full pay for vacations, illness, time off and superannuated employees; and that no reason appeared why a uniform compensation could not be guaranteed each week as a minimum if the added compensation contained in such minimum beyond the compensation produced by multiplying the hourly rate by

the number of regular hours[1] be allocated to overtime hours, and if added overtime compensation beyond the amount included in the guaranteed minimum be paid when the number of overtime hours were such as to require still added payment (R. 37-39, 46, 85-87).

Accordingly, respondent arranged separately with each of its employees for an hourly rate of pay for regular time. The amount of such hourly rate varied as to each employee, depending, in the main, on the past salary paid to the employee. Direct relationship to the past salary of the employee was achieved in most instances by dividing 60 into the past weekly salary, but with variation of the fraction in individual cases in consequence of particular conditions, as a short-cut method of arriving at an appropriate hourly

[1] Throughout this brief respondent uses "regular hours" or "regular time" or "regular time hours" to indicate the first forty-four hours during the first year of the Act, forty-two hours during the second year of the Act and forty hours thereafter, as opposed to the overtime hours. Similarly respondent uses "regular pay" or "regular rate of pay" to indicate the pay or rate of pay for the regular hours, as opposed to the pay or rate of pay for the overtime hours. Petitioner sometimes uses the same expressions to indicate the same meanings. But, more often, petitioner uses "straight-time" or "straight-time hours" as the equivalent of "regular time" or "regular time hours." Likewise petitioner frequently uses "straight-time pay" or "straight-time rate" to indicate the pay or rate of pay for the regular hours as opposed to the pay or rate of pay for overtime hours. Respondent has avoided the use of the word "straight-time" because it is not a word which possesses any dictionary meaning and is susceptible of misuse to indicate pay or rate of pay derived by distributing total pay at a uniform hourly rate for all hours worked through the process of dividing the total number of hours worked into the total compensation. Indeed, petitioner sometimes uses "straight-time pay" to mean the pay or rate of pay derived by such computation. It is important to avoid the confusion which might result from sometimes using "straight-time pay" to mean the pay for the first forty hours and sometimes using the same expression to mean the quotient obtained by dividing the total number of hours worked into the total compensation. Respondent's usage of the mentioned words conforms to the dictionary definitions. See Webster's New International Dictionary, 1933 Edition: "Overtime, adv. After the proper or regular time or limit"; Century Dictionary, 1934: "Overtime, n. Time during which one works beyond the regular hours." Such usage also conforms with the usage adopted by the Act.

rate for regular time for agreement between employer and employee. Thus all the same elements which went into the fixing of the past salary, including the skill of the employee, his efficiency, his faithfulness, his value to the business, his experience, his length of service, and the number of hours to be worked, and, on the other side of the ledger, the year-end bonuses, the paid vacations, the time off for illness, the policy of employer with respect to superannuated employees, and the permanency of the employment, went into the fixing of the regular hourly rate (R. 87-89).

The regular hourly rate of pay so agreed upon between employer and employee, together with the agreement to pay not less than one and one-half times such rate for all overtime hours, and the agreement for minimum weekly guaranteed amount, were embodied in letter agreements signed by employer and by every employee. The initial contracts were dated October 22, 1938, and are of typical form as follows (R. 467-468):

October 22, 1938.

JAMES S. ALDERMAN
Station WFAA
Dallas, Texas

Dear Sir:

The Fair Labor Standards Act which goes into effect on October 24, 1938, provided for the following minimum wages and maximum hours of employment:

First year—25¢ per hour minimum
44 hour maximum per week

Second year—30¢ per hour minimum
42 hours maximum per week

Third year—40¢ per hour minimum
40 hours maximum per week

except that employees may work more than the number of hours specified above, provided that overtime rates shall be a minimum of one and one-half times the basic rate.

In order to conform our employment arrangements to the scheme of the Act without reducing the amount of money which you receive each week, we advise that from and after October 24, 1938, your basic[8] rate of pay will be 67 cents per hour for the first forty-four hours each week, and that for time over forty-four hours each week you will receive for each hour of work not less than one and one-half time such basic rate above mentioned, with a guaranty on our part that you shall receive weekly, for regular time and for such overtime as the necessities of the business may demand, a sum not less than $40.00.

Very truly yours,

G. B. DEALEY,
President.

MR. G. B. DEALEY:

This will acknowledge receipt of your letter of October 22nd concerning wages and hours effective October 24, 1938.

(signed) JAMES S. ALDERMAN."[9]

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[8] Petitioner at the trial and in smaller measure in his brief attempts to make point of the use of the expression "basic" rate of pay in the letter agreements in lieu of "regular" rate of pay. But it is quickly apparent from the letter contract as a whole and particularly from the description of the Act as requiring that overtime rate shall be a minimum of one and one-half times the basic rate, that the term "basic rate" was used as synonymous with "regular rate."

[9] Although petitioner does not challenge the genuineness of such employment letters as constituting true agreements between employer and employee, affirmative proof was made that the letters were signed by all employees voluntarily and in good faith and without persuasion or coercion of any kind (R. 87, 182, 183-184, 388). Petitioner's brief (Note

Such a letter was signed by each employee prior to October 24, 1938 (R. 54). Subsequently as any change took place in rates of pay, either as to hourly rate or minimum guaranteed amount, new employment letters were signed to conform to the changes. The form of letter agreement used in such instances, and as to all employees who began employment after October 24, 1938, was changed to correct the misstatement of "40¢ per hour minimum" in the third year of the Act but was substantially unchanged (R. 470-471, 50-53).

As to the particular 48 employees selected by petitioner for sample evidence purposes, the regular hourly rates of pay and minimum guaranteed weekly amounts, at the outset, and as increased from time to time by execution of new employment agreements, are shown at R. 469-470, 472-473. As to the employees as a whole the regular hourly rates of pay and minimum guaranteed amounts in effect at the time of trial are shown at R. 441. Such schedule shows 74 employees at 30¢ per hour regular rate, 56 at rates of between 31¢ and 40¢ per hour, 61 at rates of between 41¢ and 50¢ per hour, 44 at rates of between 51¢ and 60¢ per hour, 40 at rates of between 61¢ and 70¢ per hour, 44

8, p. 7) points out that in some instances raises were given in advance of preparing and executing new written agreements evidencing the new rates. But no claim is made that any employee failed to understand the written agreements or any oral arrangements for a raise which may have preceded the written agreements. And it is not contested that all such agreements, both oral and written, were entered into with intent on the part of employer to pay compensation at the rates there specified and intent on the part of employee to accept compensation at such rates, and compensation was so paid and so accepted, without complaint or misunderstanding from anyone for nearly twenty-eight months before the trial of this case. And at the trial all employees filed answer in the declaratory judgment suit hereinafter mentioned expressing their preference in favor of the employment agreements and asking that they be sustained.

at rates of between 71¢ and 80¢ per hour, 21 at rates of between 81¢ and 90¢ per hour, 18 at rates of between 91¢ and $1.00 per hour, and 154 at rates of over $1.01 per hour.[10]

Thus, the employment contracts bound the employer to pay at least one and one-half times the specified regular rate for all overtime hours, with a minimum guaranty of a specified amount weekly to cover overtime hours as well as regular hours.

In substance, the minimum guaranteed sum was allocated by the terms of the employment contract so much to regular time at the specified regular hourly rate and the balance to overtime, with the provision that if the amount so allocable to overtime was insufficient to constitute payment for all overtime hours at a rate not less than one and one-half times the regular hourly rate, then additional compensation would be paid so that the employee would receive payment for each overtime hour at the rate of at least one and one-half times the regular hourly rate.

Of course, in instances where the regular hourly rate was exactly 1/60 of the minimum guaranteed amount, the minimum guaranteed amount was sufficient to cover both regular time work and overtime work up to a total of 54½ hours during the first year of the Act (when overtime began after 44 hours), and 54 hours during the second year of the Act (when

[10] See Joint Hearings before the Senate and House Committees on the Fair Labor Standards Act, Part 1, p. 244: "In a recent statement from the Department of Labor the highest paid industries were listed as follows: Newspapers, 94.2 cents per hour; rubber tires 93 cents per hour . . . ."

overtime began after 42 hours), and 53.3 hours since October 24, 1940 (when overtime began after 40 hours). For all hours worked above such number in any week additional compensation was due under the employment agreements, and was paid.[11]

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[11] Petitioner arbitrarily assumes in his brief that the minimum guaranteed amount is for regular time alone and does not cover any extra compensation for overtime pay. Such assumption is contrary to the language of the employment contracts, the understanding of all the parties to the contracts and the practice of employer and employees in applying the contracts. The only reasons offered by petitioner for his assumed interpretation of the contracts are found in note 45, p. 36, of the brief, where it is said that the contracts result in "fantastic" variations in overtime pay, that overtime would be paid in weeks under forty hours "for working no overtime at all" and that respondent at the trial characterized the variable overtime pay as a "bonus." In fact, the only reference to "bonus" came from petitioner's Regional Director Street, as examination of the cited pages of the Record (15, 31, 87) will show. As for the other reasons, petitioner overlooks the fact that the weeks of no overtime hours are rare; that such weeks are sandwiched in between many other weeks of overtime hours, that the employment as a whole was based upon a continuing number of weeks, most of them containing overtime hours, that the minimum guaranteed sum represented the idea of employer and employee of a composite week made up of all such continuing weeks, that the employee received the minimum guaranteed sum in short weeks only because he was to work longer weeks before and after, and that, in reality, the minimum guaranteed amount covered a continuing course of overtime employment, in addition to the continuous course of regular time employment. There is no dispute in the record as to the true intent and agreement of employer and employee on this point. See R. 132-134. Indeed, the weeks of no overtime hours were attributable in almost every instance to absence by reason of vacation, illness, time off for personal affairs or compensating time off allowed for loss of usual rest periods in prior weeks of unusually long hours. Thus, as to Anderson, the Record shows six weeks of no overtime hours. The first, ending 12/26/38, was the week of Christmas holiday. The second, ending 5/29/39, was a week of regular vacation. The next, ending 2/26/40, was a week of illness. The next, ending 9/2/40, was the week of Labor Day holiday. And the last, ending 10/21/40, was the week of the State Fair of Texas, held in Dallas, for which all Dallas employees are allowed a holiday. (R. 194-197, 454). What substance, then, in any claim based upon "fantastic" operation of the employment contracts in weeks of no overtime hours? Are the contracts to be overridden because respondent chose to continue full pay in weeks of illness or holiday? Indeed, upon analysis, it will be seen that the choice of respondent to continue full pay during such weeks really amounts to a special contract made for such weeks. The employer really responded to an express or implied request of the employee to continue pay during such weeks. Thus the situation in such special weeks is not to be taken as vitiating the agreement and situation which exist in the weeks when overtime service is required. Upon further analysis, it will be seen that the special grant of pay in the weeks of illness and vacation, etc., is really added compensation for the overtime service in other weeks. When compensating time off was given in a particular week to make

For instance, Olin S. Brown is a control operator at WFAA and necessarily works fluctuating hours (R. 125-126). His rate of pay was fixed by agreement on October 22, 1938, at 71¢ per hour regular rate, with minimum guaranteed amount of $42.50 (R. 469). Such rate of pay was later increased to 75¢ per hour regular rate with $45.00 minimum guarantee, and was increased again in January, 1941, so that at the time of trial it stood at 84¢ per hour, with minimum guaranteed amount of $50.00 per week (R. 126, 472). During the week ended April 24, 1939, he worked 66 hours and received $57.94 (R. 130-134).

Robert Mountique, a paper handler, was employed by contract specifying 30¢ per hour as regular rate and $15.60 weekly minimum guarantee, effective October 24, 1940 (R. 473). During the week ended December 2, 1940, he worked 54 hours and received $18.30, which was $12.00 for the 40 hours of regular time and $6.30 for the 14 hours of overtime, to wit, 45¢ an hour for the overtime (R. 102, 276).

J. L. Brewer, a bookkeeper, was entitled by contract of October 22, 1938, to 34¢ per hour regular rate and $20.00 weekly minimum guarantee (R. 469), subsequently twice raised (R. 472). During the week of January 9, 1939, he worked 63 hours and received $32.50, which included $14.96 for the 44 hours of

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up for unduly long hours in prior weeks the transaction was in form as well as substance, and expressly as well as by implication, added compensation for the overtime service. Moreover, no complaint of law violation is made as to any week of no overtime hours. Petitioner's complaint relates wholly to weeks when overtime hours were worked. In all such weeks the contract was, and could be, applied exactly as it reads, and as the parties understood and agreed.

regular time and $17.54 for the 19 hours of overtime, such overtime pay being at the rate of more than one and one-half times the specified regular rate, and including $2.50 paid extra because the work included a special Sunday morning job of checking classified advertising (R. 102-103, 209).

Similarly, J. L. Wicker, a plant engineer at WFAA, received 71¢ per hour regular rate with minimum weekly guarantee of $42.50 (R. 470), subsequently raised (R. 473). During the week of March 13, 1939, he worked 59 hours and received $47.29, which was $31.24 for the 44 hours of regular time plus $16.05 for the 15 hours of overtime, to wit, the overtime rate of $1.07 (R. 104-105, 336).[12]

Petitioner's brief (p. 33, note 38) states that in some weeks "no additional compensation was paid even for hours in excess of respondent's maxima."

On the contrary, the witness Donosky testified fully that the practice as well as the express agreement was to pay the requisite added amount when the overtime hours were such that the weekly guaranteed minimum was not sufficient to cover all the overtime hours at one and one-half times the regular rate of pay (R. 89-93), and, further, that he had caused the wage and hour computation sheets offered in evidence by petitioner to be checked for possible instances of variance

[12] Petitioner's brief points out that payments for overtime in excess of the amount for overtime included in the weekly guaranteed amount were not ordinarily made until the following week because the clerical work of making up pay checks necessarily began before the end of the current week. But it is not claimed that the Act requires such added payments to be made at any particular time or that delay of one week is unreasonable. The delay would be no less if petitioner's method of computation were followed.

from such practice, with result that only two such instances had come to light, one instance as to Roosevelt Burleson, a colored paper handler, who got $17.50 in a particular week when he should have received $17.85, and the other instance as to Tom Simmons, in charge of the telegraph desk, when in the week of the Athenia disaster he worked long overtime hours and failed to receive the full amount to which he was entitled under the terms of the employment agreement (R. 97-98, 103-104, 105). It should be noted as to Simmons that it was thought that he was exempt from the Act as occupying a supervisory capacity (R. 98) and that the requirement of keeping time was ceased as to him in 1940 (R. 289-290). A recheck of the wage computation sheets discloses one additional instance that is unexplained, J. E. Lockart, Jr., week of 7/31/39 (R. 250). Nine similar instances which would seem to appear in the wage computation sheet of William C. Ellis (R. 321-323) are not true instances of variance from the regular practice. Ellis performed two separate jobs, one as studio control engineer, for which his regular rate was 75¢ and minimum guaranteed sum was $45.00, and the other, handling electrical transcriptions, for which he was paid separately a flat sum of $10.00 per week (R. 109, 472), and the overtime hours worked by him were attributable in large part to such ancillary job for which he was paid on a flat sum basis.

The record demonstrates that the few instances of failure of compliance with the employment agreements are nominal and arose from inadvertence and do not

tend to indicate an intention or practice of departure from the terms of the employment contracts.

In order to maintain a fair distribution of the work among the employees in each department, each department head was given the authority to fix a maximum number of hours for his department beyond which the employee would receive specially favored treatment in addition to his usual overtime compensation. When employees worked longer than the departmental maximum they would be given time off in some other week, or time off would be accumulated for use in extending the usual vacation period, to compensate for the excess hours. Such method of giving time off was not employed as a substitute for overtime pay. It represented an additional allowance for overtime and was not abandoned after the Act came into effect. For instance, in the city news department the maximum hours without compensating time off was 48 before the Act went into effect. After the Act went into effect such maximum was reduced to 45. If an employee worked 55 hours in any week in such department, he was paid for 40 hours at the regular rate of pay specified in the employment contract plus 15 hours at one and one-half times such regular rate of pay and, in addition, he was given 10 hours time off in the next week or as soon thereafter as possible (R. 64, 90-94).

Petitioner's brief refers to the above arrangement as maintaining a sort of "median figure" of "48 hours for men and 44 hours for women," and then states that such median figure remained the same after the Act as before. Thus the brief contains repeated state-

ments that the result of respondent's wage arrangements was that "no change in working hours or in compensation was made on October 24, 1939," or "on October 24, 1940," that respondent was permitted "to maintain unchanged its working and wage schedule despite the Act," and that the employees after the Act worked "the same hours for the same compensation as before."[13]

While the objective was to maintain the employee relations and wages on a level basis with that which theretofore existed, it was not desired to abandon the policy of making promotions, pay increases, and improvements in working conditions as rapidly as circumstances permitted. The fact is the departmental maximums were reduced from time to time in the city news department, as above noted, and in other departments than the city news department, and in all departments generally as to women employees (R. 63-64, 95-96). Similarly raises in pay took place from time to time both as to hourly rate and minimum guaranteed sum. Thus, of 38 employees listed at R. 469-470,

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[13] Of course, it would seem to be of no legal consequence whether hours and salaries were greater or less after the Act than before or whether any particular employee worked longer or fewer hours after October 24, 1940, than before, or after October 24, 1939, than before, or after October 24, 1938, than before, so long as no employee was paid less than the minimum prescribed by the Act or less than one and one-half times the regular rate of pay for all overtime hours. Indeed, petitioner conceded in his brief in the Circuit Court of Appeals (p. 69) that "The government does not, of course, claim that genuine regular rates of pay may not be fixed by agreement between employer and employee. Neither do we contend that Section 7 freezes wages at the levels prevailing at the effective date of the Act or at any time. Nor do we claim that the Act prevents a genuine reduction in wages," and repeats such admissions at p. 37 of his brief in this court. Nevertheless, petitioner's argument lays such stress on whether salaries and hours were greater or lesser after the Act than before that it seems proper to point out the inaccuracy of petitioner's statement of the facts in this respect.

selected by petitioner for sampling purposes, 34 received raises in pay, many of them twice, between October, 1938, and January, 1941 (R. 472-473). The result was a substantial increase in the total payroll in a typical week in October, 1940, over a typical week in October, 1938 (R. 180-181).

The above described employee arrangements had been in effect over eighteen months with satisfaction and amicability when petitioner made claim that such arrangements were violative of the Act and that respondent owed some large amount, from thirty to sixty thousand dollars, to its employees, for which restitution was demanded, in unpaid regular wage and unpaid overtime wage, calculated as indicated at p. 4, supra, but actually the claim was that all payments should be allotted to the regular hours, leaving a deficit existing only in overtime pay. The claim was that the agreement for a minimum guaranty somehow automatically raised the true regular rate of pay beyond the agreed figure, resulting in a claimed liability to pay still more, plus a still added amount as penalty, by the process referred to at p. 4, supra.

Such claim was persisted in despite the admitted "very fine and generous treatment the News has always given to its employees in the matter of compensation and in the matter of time, and everything" (R. 36), and in opposition to the desires of the employees (R. 27-44).

It was stated to respondent that petitioner was moved into action because a complaint had been re-

ceived from an employee, but the Regional Director would never name or identify the supposed complaining employee and later filed answer in the declaratory judgment suit hereinafter mentioned renouncing any claim to represent any employee. He did not take the witness stand in such suit to affirm or deny the receipt of the supposed complaint (R. 27-45).

For the purpose of obtaining a judicial determination of the questions arising out of such demands, respondent filed a suit with the said Regional Director and certain employees, representatives of the whole class, as defendants, praying for a declaratory judgment on such questions (R. 12-20). The employees filed an answer in such suit, authorized over the signature of every employee, expressing preference in favor of the employment arrangements and asking that they be upheld (R. 181-184).

This suit to enjoin continuance of the employment arrangements was filed in response to the declaratory judgment suit. Both suits were tried together, resulting in a decree in both suits upholding the respondent's wage arrangements. Since the Regional Director was dismissed from the declaratory judgment suit upon his disclaimer of representation of any employee, no appeal was taken in the declaratory judgment suit.

SUMMARY OF ARGUMENT

I.

A. Regular Rate as Applied to This Case

When compensation is paid on the basis of a salary or uniform minimum amount paid periodically to cover overtime hours as well as regular hours, the

problem under Section 7 is to separate what is paid for the regular hours from what is paid for the overtime hours.

The Act lays down no rule for determining such regular time earnings. Nor does the Act confer authority on the Administrator to make rules on the subject. Hence, the problem is left for determination by the courts in the usual way upon appraisal of the evidence.

The ultimate issue of what earnings in a particular case are paid for the regular hours is a question of fact just as much as the related question of what total sum was paid as earnings for the total hours.

In this case such question of fact is now settled by the harmonious findings of the lower courts.

Such ultimate question ordinarily depends upon ascertaining the intent and agreement of the parties who give and receive the payment. Indeed, petitioner concedes (brief, p. 37) that "all rates of pay have their ultimate basis in the agreement of employer and employee."

This then becomes the determining point.

It may be easy or difficult of ascertainment, depending upon the particular circumstances of the case.

The contract of employment may contain no express provision, written or oral, for allocation of pay between regular time and overtime. The contract may provide merely for an all-inclusive salary to cover an indefinite number of hours or a definitely stipulated number of hours, including some overtime hours. The

query then becomes whether an agreement for allocation or separation of pay may be fairly implied from all the circumstances of the case in the light of inferences fairly to be drawn, and, if not, whether the method of computation described in Interpretative Bulletin No. 4 may then be applied as most nearly conforming to the probable understanding of the parties.

Such is the problem of the Missel case, which is to be argued immediately following this case, and of other cases cited in notes 22, 23 and 24, pp. 22 and 23, of petitioner's brief.

No such difficulty exists in the case at bar because here the understanding and agreement of the parties is formally recorded in writing.

The findings of the lower courts and the concessions of petitioner in his brief remove all claims of pretense, artifice, bookkeeping device and duress as applied to the agreements. It is not denied that the rate of pay specified in the contracts for regular time and the overtime compensation specified in the contracts were intended to be paid by the employer and to be received by the employee and were continuously so paid and so received. Admittedly (pet. brief, pp. 12, 38) the contracts of respondent are "a legally binding contract with its employees" and "bona fide" and free of "fraud or duress" or "dishonest intent." Admittedly the contracts were strictly adhered to and continuously approved by the parties, after and notwithstanding the filing of this suit, as well as before.

Hence this case is the easy case. The separation of

pay between regular time pay and overtime pay is made plain by express and valid agreement of the parties. The agreed allocation yields at least the minimum pay for regular hours and at least the prescribed one and one-half ratio of pay for overtime hours. Admittedly, the Act requires no more.

B. Effect of the Contracts

Petitioner's real complaint is that the agreed allocation of pay does not produce greater total pay or shorter hours than before the Act. But he concedes (brief, p. 37) that the parties are free to contract as to wages and rates of pay and even to reduce wages and lengthen hours, so long as the rates of pay agreed upon do not violate the minimum for regular time or the prescribed ratio for overtime. What substance, then, in a contention based upon failure of the contracts to increase wages or reduce hours?

C. Petitioner's Method of Computation

Petitioner's method of computation, as explained at p. 4, supra, offered as a demanded substitute for the contract rates of pay, is wholly unworkable as applied to the facts of this case, in that:

(1) It would become impossible to arrange uniform weekly or monthly compensation for employees working fluctuating hours. All considerations of sound policy are in favor of uniform payments to employees traditionally paid on a salary basis, like the editorial, professional, and white collar employees involved in this case. Petitioner does not contend that disruption of the salary system is to be desired. He only contends that it is an inexorable, though unfortunate, result of the Act. The truth is, it is not the result of any

command of the Act and was never intended by Congress to be a result. Rather, it is the result of petitioner's method of computation.

(2) It is an ex post facto determination, to be made only after the work is done, when predetermination of rates of pay is essential to workable employer-employee relations.

(3) It requires that the employee be classified as "a regular hours" employee or "a fluctuating hours" employee, one method of computation to be followed as to the former and a different method as to the latter. Such classification is to be made in the light of the uniform or non-uniform pattern of the hours in the whole course of the employment, including weeks to be worked in the future long after the employer must pay and the employee must receive what is due. Such classification becomes difficult as to employees who work many weeks of uniform hours and other weeks of non-uniform hours. And it becomes actually impossible, in some instances, to determine, at the time payment is due, whether the pattern of hours will be "regular hours" or "fluctuating hours" and whether the one or the other method of computation is required.

(4) It arbitrarily allocates the whole of the compensation to regular time compensation and arbitrarily refuses to recognize that any part of what is paid is extra compensation for overtime. Such is the necessary result of dividing the salary by the number of hours worked and treating the resulting figure as the "regular rate" of pay. Whether or not such a result may be defended when no part of the salary is ear-marked as added pay for overtime, as in cases cited at pp. 22-23 of petitioner's brief, it is clearly unwarranted when a part of the salary is so ear-marked by agreement of the parties.

(5) It produces fantastic results. For exam-

ple, Olin Brown worked under a contract that specified 75¢ for regular rate, not less than $1.125 for overtime rate and $45.00 for minimum guaranteed sum. During the week ending 4/24/39 he worked 66 hours. For that week he was due $57.94 according to the contract rates and such amount was paid. But petitioner's witness, special auditor Sherrill, applying petitioner's method of computation, testified that Brown's true regular rate for the week in question was 68¢ per hour ($45.00 divided by 66 hours) and true overtime rate was $1.02 per hour, and so yielding $52.36 for total compensation due for the week. Thus Sherrill testified that Brown was actually overpaid $5.58 for the week; that Brown's true regular rate of pay was 68¢ per hour although he was actually paid, and entitled by contract to receive, 75¢ per hour for the regular time hours; and that his true overtime rate was $1.02 per hour, although he was actually paid, and entitled by contract to receive, $1.125 per hour for the overtime hours. Surely there must be something radically wrong with a method of computation which finds that an employee is entitled to receive less than his employment contract agrees to pay him, and less than is actually paid and received. Other equally curious results may be found in Sherill's testimony. To meet this difficulty petitioner presented a new and changed method of computation by reply brief filed after argument in the Circuit Court of Appeals. But such changed method produced equally odd results. Although it is not entirely clear, petitioner seems now to have gone back to the original method.

D. No Policy of the Act Is Frustrated By the Employment Contracts

The legislative history of the Act confirms what is apparent from the Act itself, that the hope or design of spreading employment by curtailing hours of work

was kept within very modest limits, to be achieved only to the extent that employers were unable or unwilling to pay overtime rates.

It was recognized by Congress that spread of employment would take place principally in the lowest paid and unskilled employments, where the labor product in dollar value is so low that the employer cannot afford the added overtime wage. It was known that in the skilled employments, such as here involved, overtime rates would be paid in lieu of curtailing hours. Indeed it was known that in the skilled employments overtime pay, and even the precise formula of time and one-half, had already become a traditional policy.

Hence, the members of Senate and House who had the legislation in charge disclaimed any intent to work revolutionary change, except in the group of lowest paid, exploited workers, victims of sweatshop conditions, known as the submerged one-third, as to whom conditions of employment were shockingly substandard.

As to the many millions of skilled workers, already highly paid, it was considered that the Act merely gave statutory recognition to an overtime tradition which had long existed, and fixed a common starting point, 40 hours, for overtime pay to begin. As to them it was not thought that the problem of compliance was serious or that a disruptive change was being wrought.

Much less was it thought that employment agreements fairly entered into, recognizing the prescribed overtime ratio, accomplishing the desideratum of uni-

form pay, and continuing happy employee relationships of long standing, were being stricken down over the protest of employee and employer alike.

The Act was designed to encourage, not to unsettle, amicable employer-employee relations.

The Act was designed to encourage free bargaining as to hours and rates of pay above the statutory minimums, not to require those already above to pay still more. The Act was designed to give legal sanction to contracts which already assured more than minimum standards and to protect the parties to such contracts from the unfair competition of "chiselers" whose employment arrangements were substandard, not to penalize them by requiring them to do more.

What a distortion of the intent of Congress to use the Act as an instrument to strike down the very more-than-minimum-pay arrangements which Congress purposed to encourage, or to penalize the employer who already had provided more than minimum pay arrangements by increasing his burden.

E. The Claimed Administrative Construction

Interpretative Bulletin No. 4, urged by petitioner as constituting an "administrative construction," is limited, in its terms and effect, to bookkeeping devices and salaries which do not allocate the pay between regular hours and overtime hours. But even if the Bulletin were exactly responsive to the fact situation

in this case it does not represent administrative action of the character which is protected by the rule of "great weight."

II.

If the Act must be construed to require payment of overtime compensation based upon an assumed regular rate of pay above the statutory minimum and above the agreed rate fixed by contract between employer and employee and above an amount that has any relationship to "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers," a serious question would be presented of the power of Congress under the Com nerce clause and of unconstitutional impairment of contract under the due process provision of the Fifth Amendment. The Act should be construed in such wise as to avoid such constitutional objections.

III.

Respondent's newspaper employees are not engaged in interstate commerce or in the production of goods for interstate commerce within the coverage of the Act.

IV.

Respondent is a service establishment, the greater part of whose servicing is in intrastate commerce, within the servicing exemption of the Act.

ARGUMENT

I.

The allocation of pay understood and agreed to by the parties and reflected in the regular time and overtime rates specified in the employment contracts fixes the "regular rate" within the meaning of Section 7(a) and satisfies the requirements of such section.

A.

Regular Rate as Applied to This Case

The applicable language of Section 7(a) is as follows:

> "* * * unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

Petitioner states (brief, p. 11) that "regular rate" means the "actual rate of earnings during straight time," i.e., during regular hours, as opposed to the actual rate of earnings during overtime hours.

Respondent assumes the correctness of such definition and starts from that point.[14] Such was the definition applied by the lower courts in this case.

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[14] Respondent has never urged the interpretation many times put forward, Bumpus v. Continental Baking Co., 124 F. (2d) 549, 551 (C. C. A. 6th, 1941); McLendon v. Bewley Mills, 4 Wage Hour Rept. 30 (N. D. Tex., 1940); St. John v. Brown, 38 F. Supp. 385, 388-9 (N. D. Tex., 1941); Klotz v. Ippolito, 40 F. Supp. 422, 425 (S. D. Tex., 1941); Sunshine Mining Co. v. Carver, 41 F. Supp., 60, 66-7 (D. Idaho, N. D., 1941); Boylan v. Liden Mfg. Co., 4 Wage Hour Rept. 158 (C. C. Mich., 1941); Haddad v. Berkerman Shoe Corp., 4 Wage Hour Rept. 329 (C. C. Pa., 1941), and sometimes sanctioned, Gurtov v. Volk, 11 N. Y. S. (2d) 604 (Munic. Ct. N. Y., 1939); Reeves v. Howard County Refining Co., 33 F. Supp. 90, 91 (N. D. Tex., 1940); Missel v. Overnight Transp. Co., 40 F. Supp. 174, 180 (D. Md., 1941), subsequently reversed in 5 Wage Hour Rept. 25 (C. C. A. 4th, 1942); Keegan v. Ruppert, 4 Wage Hour Rept. 712, 713 (S. D. N. Y., 1941), that "regular rate" means the minimum legal rate specified in Section 6 of the Act, to wit, 25c an hour for the first year, 30c an hour for the next six years and 40c an hour for all time thereafter.

The dispute in this case is on the point what such actual earnings were.

When compensation is paid on an hourly basis, so much for regular time and so much for overtime hours, the determination of the respective rates of pay is automatic.

But when compensation is paid on the basis of a salary or uniform amount paid periodically to cover overtime hours as well as regular time hours, it becomes necessary to separate what is paid for the regular hours from what is paid for the overtime hours.

The Act lays down no rule for drawing the requisite line. Nor does the Act confer authority on the Administrator to make rules on the subject.[15]

Hence the problem is left for determination by the courts in the usual way upon an appraisal of the evidence.

There can be no doubt that the question of what earnings are paid for the regular hours is a question of fact. The initial question of fact is what earnings are paid for the total hours. And the related question of fact is what portion of such total earnings is paid for overtime hours.

The short and fully sufficient answer to the whole contention of petitioner is that such questions have been passed upon with finality as facts by both lower courts[16] upon a full presentation of all the evidence.

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[15] Since the Act does not provide for any action by the Administrator on this subject, the Administrator's interpretations appear not in "Regulations" but in "Interpretative Bulletins," not published in the Federal Register.

[16] The trial court found: "That the regular rate upon which overtime or time and a half has been figured in each instance is the regular wage

Of course, this Court accepts the findings in which two courts concur unless clear error is shown."

Of course, the fact of what pay for regular hours and what pay for overtime hours is to be determined by recourse to the understanding and agreement of the parties who give and receive the pay. Petitioner concedes (brief, p. 37), that "all rates of pay have their ultimate basis in the agreement of employer and employee." This Court has recently so held in the Red Cap cases, Williams v. Jacksonville Terminal Co., 62 S. Ct. 659, 666-667.

Where contracts exist which cover the precise inquiry at hand, the sole remaining question is whether the contracts are free of fraud or duress or overreaching and were entered into with intent that they should be controlling as between the parties.

Here again the mentioned findings of both lower courts are against the petitioner. Also petitioner's own

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that the employee and employer had contracted for, and that such regular wage is in excess of the legal minimum wage" (R. 189).

The Circuit Court of Appeals: The contracts "were intended to, and did, really fix the regular rate at which each employee was employed" (R. 488); the "agreements fixed the regular rate of pay at which each [employee] was employed" (R. 494-495); "the contracts between employer and employee were actual bona fide contracts of employment", were "real contracts of employment", not "fictitious", not "pretense" (R. 488); the agreements "are actual deliberate contracts intelligently made, and not mere bookkeeping or a scheme to evade" (R. 496).

What else can such findings mean if not that the "actual rate of earnings during straight time" accorded with the allocation of pay as agreed by the parties and reflected in the rates specified in the employment contracts?

[17] Tex. & Pac. Ry. v. Louisiana R. R. Comm., 232 U. S. 338, 339 (1914); Brewer Oil Co. v. United States, 260 U. S. 77, 86 (1922); Texas & N. O. R. Co. v. Brotherhood of Ry. Clerks, 281 U. S. 548, 558-560 (1930); Pick Mfg. Co. v. General Motors Co., 299 U. S. 3, 4 (1936); Alabama Power Co. v. Ickes, 302 U. S. 464, 477 (1938); United States v. O'Donnell, 303 U. S. 501, 508 (1938); General Pictures Co. v. Electric Co., 304 U. S. 175, 178 (1938).

concessions in his brief (pp. 12, 38) are against him. It is conceded expressly or by inference that the contracts of respondent are "a legally binding contract with its employees" and "bona fide" and free of "fraud or duress" or "dishonest intent." It is not denied that the rates of pay specified in the contracts were intended to be paid by the employer and to be received by the employee and were continuously so paid and so received. Admittedly, the contracts were continuously approved and adhered to by the parties after and notwithstanding the filing of this suit, as well as before.

In the light of such findings and concessions this case is free of difficulty. The separation of pay between regular pay and overtime pay is made plain by express agreement of the parties. Such agreement is concededly valid and free from charges of overreaching, pretense, or law evasion intent. The agreed allocation yields at least the minimum pay for regular hours and at least the prescribed one and one-half ratio of pay for overtime hours. Concededly the Act requires no more.

The case is to be distinguished from others where an agreement for allocation of pay is not so plain. The contract of employment may contain no express provision, written or oral, for allocation of pay between regular time and overtime. The contract may provide merely for an all-inclusive salary to cover an indefinite number of hours or a definitely stipulated number of hours, including some overtime hours.

In such a case the question is whether an agreement for allocation or separation of pay may be fairly

implied from all the circumstances of the case in the light of all inferences fairly to be drawn.[18]

If no agreement for allocation of pay can be fairly implied, it then becomes necessary to adopt some rule which may be without basis in the understanding or agreement of the parties but which yet may be the best that the court can do. Such may be a proper case for applying the method of computation described in Interpretative Bulletin No. 4.

The cases cited in notes 22 and 23, pages 22 and 23, of petitioner's brief as supporting his method of computation are of the mentioned character. The recognized point of distinction is made clear in the opinions in such cases.[19]

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[18] In cases as follows it was held that such agreement for allocation was fairly to be implied from the circumstances of the case: Reeves v. Howard County Refining Co., 33 F. Supp. 90, 91 (N. D. Tex., 1940); Fleming v. Stone, 41 F. Supp. 1000, 1004, 1006 (N. D. Ill., 1941); Schlee v. Lincoln Oil Co., 5 Wage Hour Rept. 72 (C. C. Mich., 1941).

In other cases as follows it was held that an agreement for allocation could not be fairly implied: Warren-Bradshaw Drilling Co. v. Hall, 124 F. (2d) 42, 44 (C. C. A., 5th, 1941); Bumpus v. Continental Baking Co., 124 F. (2d) 549, 552-553 (C. C. A., 6th, 1941); St. John v. Brown, 38 F. Supp. 385, 389-390 (N. D. Tex., 1941); Muldowney v. Seaberg Elevator Co., 39 F. Supp. 275, 282 (E. D. N. Y., 1941); Klotz v. Ippolito, 40 F. Supp. 422, 425 (S. D. Tex., 1941); Hargrave v. Mid-Continent Petroleum Corp., 42 F. Supp. 908, 909 (E. D. Okla., 1941); Fleming v. Knox, 5 Wage Hour Rept. 38, 40 (S. D. Ga., 1941), Allen v. Moe, 5 Wage Hour Rept. 106 (D. Idaho N. D., 1942); Emerson v. Mary Lincoln Candies, 20 N. Y. S. (2d) 570, 571 (N. Y. Supr. Ct., 1940), affirmed 26 N. Y. S. (2d) 489, affirmed 38 N. E. (2d) 234; DuBois Soap Co. v. Floyd, 38 N. E. (2d) 919, 921 (C. A. Ohio, 1941).

[19] E.g., St. John v. Brown, supra, 38 F. Supp. 385, 388-389: "Plaintiffs insist if, what defendants were paid can be allocated as to cover the statutory minimum for the statutory maximum hours and, in addition, one and a half for all overtime, that such a salary meets the requirements of the law. * * * The proposition seems very plausible, but, unless such was an arrangement agreed to by the parties, my conclusion is, it is not a compliance. * * * It is not enough that the salaries here, independent of the working contract, may be allocated or spread so as to cover the minimum and one and a half for overtime. * * * The key to the right answer is the true per hour wage of the employee. That must be determined, of course, by reference to the actual employment contract." (emphasis ours).

Missel v. Overnight Motor Transportation Co., supra, 5 Wage Hour

The point of distinction is perhaps best expressed in the opinion of the Circuit Court of Appeals for the Fifth Circuit in Warren-Bradshaw Drilling Co. v. Hall, 124 F. (2) 42, decided subsequently to this case. In such case the court (two judges sitting who did not sit in deciding the case at bar) approved its holding in the case at bar and pointed out the distinction which exists when no express agreement exists for allocation of the pay and no agreement can fairly be implied.

The emphasis here is on the contract between employer and employee. Such is the proper place for emphasis. The language of the Act suggests the same place of emphasis. The language is not merely "regular rate" or "regular rate which he receives." It is "regular rate *at which he is employed.*" The words "at which he is employed" point to the contractual basis of the employment.

A similar clue to the intended meaning of "regular rate" is to be found in the legislative history of the Act.

The original bill introduced in the Senate and the

Rept. 25: "The case differs from the case at bar, because there was a contract for a weekly wage, and also for an hourly 'regular rate' not less than the minimum on which overtime should be computed. We find no such written contract in the instant case, and there is no evidence in the record, nor any contention by the defendant, that the parties had agreed upon a rate of pay per hour. That there are important grounds of distinction is admitted by the court in the Belo case in the very language we have quoted."

Klotz v. Ippolito, supra, 40 F. Supp. 422, 425: "But there is an important difference between the cases [Belo]. There, the rate for the overtime is not less than one and one-half times the regular rate, and here it is less. Here, the rate per hour for overtime is the same as the rate per hour for regular time."

Fleming v. Knox, supra, 5 Wage Hour Rept. 38, 40: "It is not a case where the employer and employee, theretofore paid on a weekly or monthly basis, after the effective date of the Act get together, and in a bona fide effort to readjust the rate to the hourly basis from a monthly or weekly rate reduced the rate below what it would have been if reckoned previously by the hour, and the new hourly rate is still above the minimum guaranteed by the Act."

House on May 24, 1937, and also the substitute bill favorably reported by the Senate Committee on July 26, 1937, and passed by the Senate on July 31, 1937, and also the amended bill recommended to the House by the House Committee on August 6, 1937, and also the substitute bill later approved by the House Committee and offered as an amendment on the floor of the House on December 15, 1937, although varying in many of their provisions, were identical in the overtime provision, in language as follows:

> "* * * if the employees so employed receive additional compensation for such overtime employment at the rate of one and one-half times the regular hourly wage rate at which such employees are employed."

Likewise, all such bills were identical in the provision for reparation for violation of the above quoted overtime pay requirement, in language as follows:

> "* * * he shall be entitled to receive as reparation from his employer additional compensation for the time that he was employed in excess of such maximum work week at the rate of one and one-half times the *agreed* wage at which he was employed * * *" (emphasis ours).

Thus the reparation provision for failure to pay one and one-half times "regular rate" of pay authorized recovery of "one and one-half times the *agreed* wage at which he was employed."

Thus agreed wage was repeatedly used as the equivalent of regular wage. Thus the intention appears in recurring drafts of the Act that regular rate of pay shall be the subject of agreement between employer

and employee and that such agreed wage shall measure the prescribed overtime pay.

Indeed, the Committee reports explaining the provisions of the mentioned bills referred to the mentioned reparation provisions as authorizing recovery of one and one-half times the "regular rate of pay."

All this appears in more detail in the legislative history section of the Appendix volume.

Nothing in the Act suggests that full freedom of contract is not to be permitted the employee and employer so long as minimum standards are not violated. For instance, there is no reason under the Act why an agreement may not be made to pay an employee time and one-half for the first few hours of overtime and double time for subsequent hours, or vice versa, or to pay double time for overtime in one week and time and one-half for overtime in another week, or to give bonuses and paid vacations as a substitute for overtime pay beyond time and one-half. Wide latitude for agreement is left to employer and employee by the Act, and properly so.

No reason appears why the employee arrangements in this case are not well within the proper limits of such latitude.

This Court has spoken clearly on the point. In the Red Cap cases above mentioned, 62 S. Ct. 659, 671-672, this Court said:

> "Congress approached the problem of improving labor conditions by the establishment of a minimum wage in certain industries. It required

that workers in these industries receive a compensation at least as great as that fixed by the Act. Except for that requirement the employer was left free, in so far as the Act was concerned, to work out the compensation problem in his own way."

B.

Effect of the Contracts

Petitioner's real complaint comes down to the claim that the contracts did not have the effect of increasing the pay or reducing the hours which prevailed before the Act.

But petitioner concedes (brief, p. 37) that the parties are free to contract as to wages and rates of pay and to reduce wages and increase hours, so long as the rates agreed upon do not violate the minimum for regular time or the prescribed ratio for overtime. What substance, then, in a contention based upon failure of the contracts to increase wages or shorten hours?

C.

Petitioner's Method of Computation

Petitioner's method of computing regular rate of pay is reflected in the testimony of H. L. Sherrill, supervising inspector in the Dallas office of the Wage and Hour Division, at R. 153-179. Sherrill undertook to apply Interpretative Bulletin No. 4 (R. 394-432) to the facts of this case.

The impractical and distorted results are grotesque.

At the outset, the computator begins by putting aside the employment contract. He simply pays no attention to any agreement that the parties may have made as to hours of work and rates of pay. He treats

them as if they had made no agreement at all. He testified that he had not even looked at the employment contracts, although they were in writing and present in the office where he works. "I didn't have any knowledge of the employment contracts * * *." (R. 165-166).

Next, the computator decides for himself whether an employee works "regular hours" or "fluctuating hours," because he will use one method if the employee works regular hours and a wholly different method if the employee works fluctuating hours. If the employee's hours are fairly uniform from week to week, say 48 hours per week, he will divide the minimum guaranteed sum by 48 in every week, even though the hours in some other weeks may vary up or down from 48. If the employee works fluctuating hours he will take each week separately and will divide the guaranteed minimum sum by the number of hours worked in the particular week. Thus he took O. L. Bagwell, a night watchman (R. 198-200), and classified him as a regular hours employee because in most weeks he worked 48 hours. So to compute his regular rate of pay he divided the minimum guaranteed sum by 48 right on through every week of the employment, the same in the week of October 31, 1938, when Bagwell worked 50 hours, and in the week of July 31, 1939, when Bagwell worked 36 hours, and in the week of September 2, 1940, when Bagwell worked 12 hours. If the computator had classified Bagwell as a fluctuating hours employee he would have used 50, 36 and 12 as the respective divisors in the mentioned weeks

and would have arrived at entirely different results for those weeks.[20]

The expert computator classified Bagwell as a regular hours employee because out of the 30 weeks covered by the computation he worked only 3 weeks of irregular hours (R. 167).

Charles Prasifka, on the other hand, was classified by the computator as a fluctuating hours employee (R. 158) because out of the 32 weeks examined he worked 14 weeks of regular hours and 18 weeks of varying hours (R. 285-287).

Thus Bagwell was classified as a regular hours employee because his irregular weeks were only 10% of the whole. Prasifka was classified as a fluctuating hours employee because his irregular weeks were 56% of the whole.

No one knows where the line is to be drawn to divide regular hours employees from fluctuating hours employees. No one even pretends to know. The Act itself is wholly silent on the question. And even the Interpretative Bulletin says nothing on the subject. It says merely that as to regular hours employees one method of computation shall be used and as to fluctuating hours employees a different method shall be used. All that anyone knows is that expert computator Sherrill deemed 10% fluctuating hours too few, and 56% fluctuating hours quite sufficient, to constitute an employee a fluctuating hours employee. Computator Sherrill admitted that there was nothing but his own sense

[20] The differences in the two methods are set forth in the Interpretative Bulletin at R. 398-399.

of fitness to guide him in making this classification. He admitted that the addition of a single week of fluctuating hours might be sufficient to carry an employee over the line from a regular hours employee to a fluctuating hours employee.[21]

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[21] Thus Sherrill testified (R. 167-169):

Q. Now, the regular rate of pay as you compute it would therefore be less in that week of October 31, than it was in the week of January 9, 1939, wouldn't it?

A. Not in the case of Bagwell, for the reason that it is only three instances in the entire period of thirty weeks in which he worked hours other than forty-eight a week, and, therefore, I consider that it was regular hours per week, and I used forty-eight hours.

Q. Let us see about that. He worked twelve hours on the week of September 2, 1940, didn't he?

A. That is right.

Q. And he worked thirty-six hours in the week of July 31, 1939?

A. That is right.

Q. And he worked fifty hours in the week of October 31, 1938?

A. Yes.

Q. Now, you would not use twelve and thirty-six and fifty as your divisor, on those weeks, because in the great majority of weeks he worked forty-eight hours, you say you used forty-eight as the divisor for all of the weeks?

A. That is right.

Q. Suppose there had been four weeks instead of three weeks of varying hours, what would you have done?

A. I would still use forty-eight.

Q. Suppose there had been five weeks, what would you have done?

A. Out of thirty, I would say that five weeks would not be considered as changing it from regular hours per week.

Q. Suppose he worked six weeks—

MR. SEARLS: I pray Your Honor's judgment, isn't this getting into an argument?

THE COURT: Yes, it is rather hypothetical, I think we had better stand on what was done.

Q. Well, there is a line, isn't there, where you would change your method of computation from the straight forty-eight hour divisor shifting to a new method of computation whereby you use a different divisor in each week?

A. Yes, sir, if it was clearly a fluctuating weekly hours.

Q. Now, in your view, whether a man complies with the wage and hour Act, would depend on which side of the line he would deem the particular employment exactly to fall on.

MR. SEARLS: I pray Your Honor's judgment.

THE COURT: Overrule the objection.

A. Generally speaking, yes.

Q. Now, is there anything in the Act or in the interpretative

So petitioner's method of computation is at once plunged into uncertainty. Before the employer can know what is due to his employees he must guess, at his peril, as to which side of the line petitioner's investigator will place the employee.[22]

Indeed, if a particular week in question is the first week of the employment or in the early part of the employment the materials will not even be found at hand for a guess because, according to petitioner's theory, the employee's status as a regular hours employee or a fluctuating hours employee will depend on

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bulletin to advise an employer on which side of the line a particular employee is to fall, any method of computing the location of that line, so that an employer might determine the question?

A. Nothing in the regulations.

Q. I assume that you use your own personal judgment as to that matter?

A. It is the application of the definition of regular hours, and fluctuating hours as contained in regulation part 516.4.

Q. Now, is there any definition of fluctuating hours beyond that expression?

A. No, sir.

Q. No definition of regular hours beyond that expression, regular hours?

A. No, sir.

Q. So you read into the interpretative bulletin some definition, or some line of demarcation, and used that in the case of Bagwell, for instance, if he worked ten varying weeks you might call it fluctuating hours, whereas, if he worked only nine you might call it regular hours.

MR. SEARLS: I pray Your Honor's judgment on that.

THE COURT: The witness has indicated he is using his own judgment, I think he has the right to tell us how far he relies upon that judgment, since the law itself does not diagram this particular field, I think they are entitled to find out the limits in that particular field.

Q. Now, the line between regular hours, and fluctuating hours might be crossed by you, by there being one added week of fluctuating hours in the whole program?

A. That is possible, but not in the case of Bagwell.

Q. I am getting at your method of computation. And a man could be put in jail for not knowing just when he approached that line, couldn't he?

MR. SEARLS: I pray Your Honor's judgment on that.

[22] Indeed, the employer must guess as to what petitioner's investigator will guess on that point. If they guess differently the employer is in for trouble, whether or not the employer's guess turns out right and the investigator's wrong.

the entire course of the employment, including weeks to be worked in the future, as to which it cannot be known whether the hours will be usual or unusual or will fit into a pattern which the investigator will deem to be regular hours or another pattern which he will deem to be fluctuating hours.

Surely any interpretation of the Act which would put the employer in such an impossible position as this is to be avoided.[23]

The next step is to wrest a particular week out of the continuing employment picture and to divide the minimum guaranteed weekly sum by the number of hours worked in such week, ignoring all that has gone before such week and all that will go after such week and many other facts of the employment. Although the avowed purpose is to arrive at the *true* regular rate of pay, the computation is not affected by what the employment agreement or practice may be as to paid vacations, special bonuses, time off for illness, time off for personal matters, time off in some weeks to compensate for unusually long hours in other weeks, payment of wages in old age, nor by many other facts of the employment. Surely, this is to ignore the actualities of the employment.[24]

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[23] It is to be remembered that the Act creates a liability for money plus a penalty of equivalent sum plus attorney's fees. What of the constitutionality of an interpretation which makes the money liability, much less the criminal liability, depend on discerning such a shadowy, and, in some circumstances, actually non-existent, line as this?

[24] Thus, computator Sherrill testified (R. 169-171):

Q. Now, is your method of computation designed to arrive at the realities of the situation is that what is behind it, rather than just what the paper evidences of the situation might be, is that it?

A. I do not thoroughly understand your question.

Q. When you arrive at a regular rate of pay, is it your design

The next step is to make an arbitrary allocation of the full amount paid in the particular week to regular pay. The computator refuses to allocate any part of the amount paid to overtime pay, in spite of the agree-

to arrive, to act realistically, or to arrive at the actuality of the regular rate of pay, rather than at some bookkeeping figure?

A. No, it is the intent to arrive at the true regular rate of pay.

Q. Now, in arriving at that true regular rate of pay, do you take into consideration at all, time off that an employee has received with full pay in any prior week?

A. No, it is based upon the hours worked during the week concerned.

Q. In the single week?

A. That is right.

Q. Do you take into consideration any bonuses?

A. No, sir.

Q. Or regular vacations with full pay?

A. In figuring the amounts due, I take into consideration the time worked during the particular week involved, and if a man were off on vacation during the week, naturally he did not work during that week.

Q. Now, take Mr. Alderman, for instance, the evidence shows that he was sick eighty-three consecutive working days and received full pay throughout that period of time, and that that period was added to the usual two weeks vacation, and to isolated days of illness. Now, would you say that according to your theory that Mr. Alderman's regular rate of pay is just the same in that week as if he had been down there plugging and working those eighty-three days?

A. That is right, for the week under consideration.

Q. And that his regular rate of pay in that week is just the same as if he had been docked his pay those eighty-three days that he was sick?

A. The week would be considered independent of any other week.

Q. Now, if, following that week, that is treated independently, he was sick again, and gone another two weeks with illness, and, if, in the next following week he received a bonus as added compensation for his faithfulness and service, those facts also would not come into your computations at all in computing a regular rate of pay for the particular week in question?

A. I don't know that I really understand your question.

Q. If those things had happened after the week in question, as well as before, still they would have been ignored by you in computing this man's regular rate of pay in the week in question.

A. That is right.

Q. Is there any reason that you know of why you would not arrive at a more accurate estimate of regular rate of pay if you would take those things into consideration?

A. If he is employed on a weekly basis, why we are concerned with only that particular week involved.

ment of the parties providing for such allocation, in spite of long continued action and reliance by the parties on such agreed allocation, and in spite of the fact that the actualities of the employment are consistent with such allocation and none other.

It is admitted that if any part of the weekly salary or minimum guaranteed sum is properly allocable to overtime petitioner's whole process of computation falls down.[25]

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[25] Thus, computator Sherrill testified (R. 165-166):

Q. Let us go back to the week of January 9, 1939?

A. Yes, sir.

Q. And is $26.75, the figure you used?

A. That is right.

Q. And forty-eight hours is the hours you used?

A. That is right.

Q. You divided forty-eight into $26.75, getting, I believe you say, about fifty cents?

A. Fifty-six cents.

Q. Now, did you make any investigation to determine what part of the $26.75 was compensation for overtime and what part was compensation for the hours worked up to forty-four?

A. No, because the weeks preceding it was forty-eight hours, and the week preceding, before that, fifty hours—in other words, he was receiving every week, $26.75, regardless of the number of hours he was working, and, therefore, it was considered to be his regular rate of pay on a weekly basis for the purpose of compensation for overtime.

Q. That is to say, you used the $26.75, as if it were wholly allocated to the first forty-four hours of work of Mr. Bagwell?

A. No, sir, that was wholly allocated to the total number of hours he worked.

Q. Well, now, was any part of that $26.75 paid for overtime work above forty-four hours?

A. I didn't so consider it.

Q. Then it is correct that you treated the whole of that amount as allocated to the first forty-four hours that he worked?

A. No, sir, I treated it as being straight time for the total number of hours that he worked during the week.

Q. Did you, for instance, inquire to see whether there was an employment contract with Mr. Bagwell which specified what part of the $26.75 should be allocated to the first forty-four hours, and what part should be allocated to the work beyond the first forty-four hours?

A. I didn't have any knowledge of the employment contract, how-

The only excuse suggested for such arbitrary method of allocation is that the full weekly salary or minimum guaranteed sum is paid in an occasional or exceptional week when no overtime hours are worked.

It has already been shown that in this case such weeks of no overtime hours were principally weeks of vacation, holiday, illness, etc. See note 11, p. 16, supra.

This case does not present an instance of a person employed to work one week alone, such week to be only 40 hours and a full salary paid. Whatever assumption may be applicable to such a case is wholly unfounded when the employment, as in this case, is for continuous service at work which makes necessary week after week of overtime efforts.

The reality is that the weekly guaranteed minimum does cover overtime compensation up to the point that

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ever, based upon the fact that on the week ending October 31, he worked fifty hours and received $26.75, and the several following weeks he worked forty-eight hours and received $26.75, I naturally had to assume that $26.75 was his regular rate of pay on a weekly basis.

Q. Did you follow that same assumption right on through in all of your computations?

A. No, sir, I didn't. There are one or two exceptions, not in this particular form, but as to others.

Q. As to Bagwell, did you follow that same assumption right on through?

A. Yes, sir.

Q. Do you know now what the employment agreement may be as to allocating that $26.75, between regular time pay and pay for overtime?

A. I do not.

Q. But you do know that if any part of that sum is properly allocable to the overtime pay, that that portion is to be deducted in making the computation that you make, do you not?

A. That is right, we didn't figure overtime on overtime.

Q. And if any portion of the $26.75 is allocable to overtime pay, then the regular rate, as you compute it, would be wrong?

A. That is right, if some of it was overtime.

the overtime hours are such as to entitle the employee to more than the weekly minimum. He will receive the full guaranteed minimum in a particular exceptional week of no overtime hours, but solely because it is known and agreed that he will work many other weeks that involve the necessity of overtime service. It has already been shown that the guaranteed minimum really represents a composite week and that the composite week is a picture of all the employment facts, including the anticipated number of normal weeks, the anticipated number of unusually short weeks, the anticipated number of unusually long weeks, the anticipated vacations, the anticipated pay for times of illness, the anticipated time off for personal matters, the anticipated special bonuses, the anticipated compensating time off in some weeks for overtime in other weeks, etc. Yet petitioner attempts to discern regular rate of pay by reference to an isolated week wrested from its setting in the employment picture rather than by reference to the composite week reflected by the employment contract.

It is not surprising that a method of computation which is based upon the foregoing distortions leads to curious results.

Thus Olin Brown worked fluctuating hours under contract rate of 75¢ per hour for regular rate, at least one and one-half times such sum, $1.125 per hour; overtime rate, and minimum guaranty of $45.00 per week.

Expert computator Sherrill testified to his computations for Brown as to three particular weeks, the weeks

of April 24, 1939, October 28, 1940, and November 4, 1940 (R. 158-160, 172-175).

His computations, as contrasted with the employment contract and with what was actually paid, are shown in the following table:

Per Wage and Hour Division	10/28/40[25] 39 hours	Assumed week in 1941 48 hours	11/4/40 53½ hours	4/24/39 66 hours	Assumed week in 1939 80 hours
Regular Rate	1.154	.94	.84	.68	.5625
Overtime Rate		1.41	1.26	1.02	.8437
Total due for week	$45.00	48.88	50.61	52.36	55.12
Per Contract Between Employer and Employee					
Regular Rate	.75	.75	.75	.75	.75
Overtime Rate		1.875	1.125	1.125	1.125
Total due and paid for week	$45.00	45.00	45.23	57.94	73.50

It will be observed that Sherrill computed the regular rate in the week of 11/4/40 by dividing 53½ hours into $45.00, the agreed minimum weekly sum, instead of $45.23, which was the amount actually paid in the week. Similarly, for the week of 4/24/39 he computed the regular rate of pay by dividing 66 hours into the weekly minimum sum of $45.00, instead of $57.94, which was the amount actually paid in the week. This is upon the theory that the added 23¢ in the week of 11/4/40, and the added $12.94 in the week of 4/24/39, are overtime compensation and so are not to be considered in computing regular rate of pay. Of course, in actuality, part of the $45.00 also is overtime compensation, but nevertheless petitioner insists that the whole of the $45.00 must be treated as regular hours compensation and so is wholly included in computing regular rate of pay.

According to petitioner's computation the regular

[25] A holiday for the State Fair of Texas fell within this week.

rate and the overtime rate are different in each week of the employment. Such rates grow smaller as the hours worked grow longer. Thus, in the 53½ hour week Brown is entitled to only 84¢ per hour, as opposed to $1.154 in the 39-hour week. In the 66-hour week he is entitled to only 68¢ per hour and in the 80-hour week he would be entitled to only 56¢ per hour. The overtime rates decreased proportionately.

Hence, as computator Sherrill testified, Brown was actually overpaid $5.58 in the week of April 24, 1939 (R. 159-160, 173-174). Stranger still, as Sherrill testified, his regular rate of pay for that week was only 68¢ per hour and his overtime rate was only $1.02 per hour although he was actually paid 75¢ per hour for regular hours and $1.125 per hour for the overtime hours.

According to petitioner's computator, Brown was entitled in the 53½-hour week to only $5.61 more than in the 39-hour week, which is a rate of only 39¢ per hour for the added 14½ hours of work, of which all but one are overtime hours. Similarly, in the 66-hour week Brown was entitled to only $7.36 more than in the 39-hour week. This is at the rate of 27¢ per hour for the 27 added hours, of which all but one are overtime hours. And in the 80-hour week he would be entitled to only $10.12 more than in the 39-hour week. This is at the rate of less than 25¢ per hour for the added 41 hours, of which all but one are overtime hours. For the added 12½ hours of overtime worked in the 66-hour week over the 53½-hour week the added pay is only $1.75, which is at the rate of 14¢ per hour.

And for the added 14 overtime hours in the 80-hour week over the 66-hour week the added pay is only $2.76, which is at the rate of 19¢ per hour for the added 14 overtime hours. Thus the overtime hour rate dropped from 39¢ per hour payable for the first 13½ overtime hours to 19¢ per hour payable for the last 14 overtime hours in the same week.

The result is that an employer who employs two men at exactly the same rates of pay will pay less in the aggregate if one man works 50 hours and the other 40 hours than if both work 45 hours. These, and other anomalies, are exhibited in the testimony of expert computator Sherrill at R. 153-179.

Contrast the oddities resulting from petitioner's method of computation, as shown in the above table, with the sensible results obtained by applying the employment contract to the same weeks. Applying the employment contract, the regular rate of pay remains the same each week, as the parties actually intend that it shall, and, save for the assumed week of 48 hours, the overtime rate of pay remains the same each week, as the parties actually intend that it shall, and the employee's total compensation increases progressively in direct proportion to the added hours. The only span of hours within which the overtime rate of pay varies is the span between 40 and 53 hours.

A curious thing about petitioner's method of computation is that it produces exactly the counter-effect to petitioner's avowed purpose to spread employment by discouraging long overtime hours. Petitioner's com-

putation produces very low rates in weeks of very long hours. In the case of Brown, petitioner's computation of what is due would exactly conform to the employment contract in a week of 60 hours of work, but in all weeks of hours beyond 60 the computation would give the employee less than the wage contract would give him, and increasingly less as the hours grow longer.

But, of course, the most important objection to the method of computation is that it departs from the employment contract altogether, substitutes ex post facto determination for pre-determination of rates of pay, substitutes uncertainty for certainty, is based upon mere guess as to whether an employee is to be treated as a fluctuating hours employee or a regular hours employee, produces results which are square in the face of the intent and desire and understanding of employer and employee, and makes it impossible for employer and employee to enter into any arrangement for the payment of a uniform wage.

It is to be kept in mind that petitioner's method of computation is not offered as merely a permissible method for use when the parties have not themselves allocated the compensation between regular time and overtime hours. It is not offered merely as something to be used when there is nothing more tangible to go on. It is offered as something inexorable, as something to be applied in all situations, whatever the circumstances, and as something to override agreements of employer and employee.

All this without one word of sanction in the language of the Act.

After argument of this case in the circuit court of appeals petitioner filed a reply brief in which, for the first time, he took the position that Sherrill was mistaken in the method of computation followed by him in the trial court.

A changed method of computation was offered in such reply brief. The change was designed principally to get around the anomaly as to the 66-hour week of Olin S. Brown, where petitioner's method arrived at lesser rates of pay than actually contracted for and actually paid.

The changed method was to divide the 66 hours into the total pay afforded by the contract, which was $57.94, instead of $45.00, the "salary" or minimum guaranteed sum.

It is not stated in petitioner's brief in this Court whether he now urges the original method, as applied by Sherrill, or the new method as discovered for the first time in the reply brief in the circuit court of appeals. The inference from petitioner's brief in this Court is that petitioner has returned to the prior method, because he speaks always of the "weekly salary" as the figure to be divided by the hours worked. The inference is that petitioner now realizes that the new and changed method is affected with all the vices

of the old and actually increases the complexities and confusions of the old.[27]

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[27] The mentioned reply brief explained and applied the new method to a hypothetical case of a week of 66 hours worked under contract providing for 80¢ regular rate, not less than $1.20 for overtime rate, and $48.00 minimum guaranty.

Applying the contract rates the employee would receive $32.00 for the regular time hours plus $31.20 for the overtime hours, total $63.20.

Applying the new method computation, according to the mentioned reply brief (p. 3) the following would result:

For 53.3 hours he received	48.00
For 12.7 hours he received straight time compensation	10.14
Total straight time compensation	58.14
"Regular rate" (58.14÷66)	.88¢
For 40 hours at .88¢	35.20
For 26 hours overtime (88×1½×26)	34.32
Total compensation actually due	69.52

Analysis of such new method is contained at pages 1 to 7 of respondent's response brief filed in the circuit court of appeals in response to the mentioned reply brief of petitioner.

The beginning step in the new method computation is:

"For 53.3 hours he received $48.00"

The figure 53.3 is derived by multiplying the contract hourly rate (80¢) by 40 hours ($32.00) and then subtracting such product ($32.00) from the minimum guaranteed sum ($48.00) leaving $16.00, and then dividing $16.00 by the contract minimum overtime rate ($1.20), thus obtaining 13.3 as the number of overtime hours covered by the minimum guaranteed sum, and then adding 13.3 hours to 40 hours to obtain the total of 53.3 hours as covered by the minimum guaranteed sum of $48.00.

Thus the beginning step becomes:

For the first 40 hours he received (40×80)	$32.00
For the next 13.3 hours he received (13.3×1.20)	16.00
For 53.3 hours he received	$48.00

The second step required by the new method is:

"For 12.7 hours he received straight time compensation $10.14"

Here the computator must break down the amount paid above the minimum guaranteed sum ($15.20) into two amounts, one to be treated as "straight time compensation" and the other as "extra compensation for overtime." The figure $10.14 is obtained by multiplying 12.7 by the regular hourly rate of 80¢ specified in the employment contract, leaving $5.06 to be applied to "extra compensation for overtime."

And the new method computation becomes thus:

Actually paid—for first 40 hours, 80¢ per hour	$32.00
Actually paid—for next 13.3 hours, $1.20 per hour	16.00
Straight time compensation—for next 12.7 hours, 80¢ per hour	10.14
Total straight time compensation for 66 hours	$58.14

Regular rate (58.14÷66)=88¢

Thus the computator uses 80¢ per hour as regular rate for the first 40 hours (which is the contract rate) and then jumps up to $1.20 per hour

D.

No Policy of the Act is Frustrated by the Employment Contracts

Petitioner finds in the Act an objective to "reduce hours of labor" and to bring about "a spread of employment."

Petitioner does not state such objective in terms of absolute compulsion, but he does treat it as a sort of "brooding omnipresence" which colors the usual meaning of the words used in the Act to the point of requiring that employment agreements which conform to the pay prescriptions of the Act, both as to regular time and overtime, must, in addition, result in decreasing hours or increasing compensation, with final goal to curtail hours.

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as the regular rate for the next 13.3 hours (although the contract provides 80¢ for regular rate and the $1.20 is the overtime rate) and then drops back to 80¢ for regular rate for the next 12.7 hours.

Why use $1.20 as regular rate for the middle 13.3 hours (all overtime hours) when it is conceded that 80¢ is the correct amount for the following 12.7 hours and the preceding 40 hours?

Why allocate the $16.00 paid for the middle 13.3 hours in toto to "straight time" pay when the $15.20 actually paid for the next 12.7 hours (12.7×1.20) is so allocated only to the extent of $10.14?

How can 88¢ be the true regular rate of pay when admittedly (and as a part of the very process of computing the 88¢) 80¢ per hour was actually paid and received for the first 40 hours of work, and the same amount was actually paid and received for "straight time compensation" for the last 12.7 hours?

How can the true regular rate of pay be different from what was actually paid and received for all regular time hours? How can the true regular rate of pay be different from what was actually paid and received as "straight time compensation" for overtime hours?

How can the true regular rate of pay be one amount (80¢) for the first 40 hours and the last 12.7 overtime hours and yet be some different amount (88¢) for all hours alike?

It will be observed that if petitioner would merely substitute 80¢ for $1.20 as actually paid for "straight time compensation" for the middle 13.3 hours the end result of the computation would conform exactly to the contract rate, 80¢. The agreement of the parties would then be respected and enforced and all questions of computation would disappear into thin air.

That is to say, the petitioner merely gives lip service to the truism that payment of time and a half for overtime hours is sufficient to satisfy the Act. His actual desire is to override employment arrangements which provide such time and one-half pay if they do not require the curtailment of hours which he would like to accomplish.

He thus is victim of an over-zealous striving to achieve an objective as an absolute which was intended by Congress to be kept within restricted limits and to be attained only to the extent that employers are unable or unwilling to pay time and one-half overtime rates.[28]

The problem is accurately to appraise the intent of Congress on the subject.

It is of extreme importance that the true limits of the hours curtailment objective be found and announced by this Court.[29]

On this score, above all others, it is important that the Act be applied with precision and discrimination.

If misapplied to force curtailment of hours beyond the modest limits intended by Congress the Act pos-

[28] Much of the current criticism directed against the Act is attributable to a popular idea that the Act means to curtail work beyond forty hours, and a widespread fear that, whatever the true intent of Congress, the Act can be applied by the Administrator to force cessation of work beyond 40 hours. Such popular misconceptions are the result of "misinformation" with respect to the Act, as the President has recently stated. See also the recent Congressional debates, Cong. Rec., vol. 88, pp. 1699-1701, 1761-1773, 1785-1810.

[29] This is not the task of Congress as petitioner (brief, p. 24) suggests. It is a judicial problem and comes down finally to the point whether the intent of Congress, as ascertained by applying appropriate principles of interpretation, is such that the computation method of Interpretative Bulletin No. 4 must be read into the Act to the extent of overriding agreements which satisfy the pay requirements of the Act.

sesses potentialities of harm out of all proportion to the good that it was intended to accomplish.[30]

Much of the current misinformation about the Act is attributable to intemperate application of the Act in contested cases in court and in the vast field of administrative enforcement out of court. The growing tendency of the Administrator in this direction is indicated by the change of emphasis which has appeared in his interpretations and literature.[31]

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[30] The presently pressing need of longer hours and maximum production for fighting a total war gives point to this.

[31] A pamphlet issued by the Wage and Hour Division shortly after September 1, 1940, prior to trial of this case, for the special guidance of employers, styled "Employers' Digest of the Fair Labor Standards Act of 1938", contains opening paragraph as follows:

"PURPOSE

The Fair Labor Standards Act of 1938 (commonly known as the Wage and Hour Law) was enacted by Congress to prevent the use of the channels of interstate commerce to spread and perpetuate labor conditions detrimental to the health, efficiency, and well-being of workers and to wipe out unfair methods of competition based on such labor conditions."

A subsequent pamphlet, "The Wage and Hour Law—What it is," issued by the Wage and Hour Division after the trial of the present case, discovers the unemployment objective, not mentioned in the earlier pamphlet, in opening statement as follows:

"THE WAGE AND HOUR LAW

Low wages and excessive hours of toil mean undernourishment, unfair competition, and the draining hopelessness of unemployment. Customers without money to buy, results in goods rotting on the shelves of our merchants and industrial stagnation. It was to combat these enemies of a strong, united, and free people that the Congress of the United States passed the wage and hour law in the summer of 1938."

Administrator Andrews made this statement on September 29, 1938, before the Southern States Industrial Council at Birmingham, Alabama (3 Wage Hour Rept. 228):

"* * * Clerical forces, we all feel, are included in the Act. But I cannot see where there is going to be any practical difficulty there because your clerical force in any plant of any consequence certainly is earning on a basis of more than 25 cents an hour weekly wages divided by the hours they work. If they are well above 25

In their zeal to achieve ends which seem to them desirable, those who would adopt the extreme interpretation demand as the sole avenue of compliance what Congress intended as an alternative sometimes to be chosen in lieu of overtime pay.

Payment of overtime compensation, intended by Congress as a substitute for reducing hours, becomes at their hands a scheme to "circumvent" the Act.

Employment agreements at once take on a taint of shift or subterfuge if they do not reduce hours or increase pay which obtained prior to the Act, however certain it may be that the agreements yield the prescribed regular and overtime rates of pay.

Examples of such over-zealous application of the overtime provisions of the Act are to be found in several of the cases cited in notes 22 and 23, page 22, of petitioner's brief.

Such an example is to be found in a recent decision of a district court in Ohio, there cited, Williams v. General Mills, 39 F. Supp. 849.

In that case the employees, when the Act went into effect, were given the option of working 40 hours per week at 60¢ per hour or 56 hours per week at 52½¢

cents an hour, it seems to me that there would not be much question about time and a half for overtime, because you could figure in that weekly wage that time and a half over the 44 hours had been given consideration as remuneration for their full week's work."

Contrast such statement with the present position of petitioner.

per hour for the first 40 hours and time and one-half for the added 16 hours. They chose the latter because such arrangement resulted in $9.60 added pay per week. Although, admittedly, such choice did no violence to the social objectives of the Act, and although, admittedly, as the Court said, "very few men who have studied the problem contend that 48 hours or more of labor per week are detrimental to health," (p. 851), and although, admittedly, the pay received of 52½¢ an hour for the first 40 hours and time and one-half thereafter was in excess of the minimum standard for health and well-being expressed in the Act, such choice of longer hours was held to "circumvent the intent of Congress," (p. 582), and to be "against public policy," (p. 582), and the workers were actually condemned by the court as engaging almost in "a conspiracy between the men and the company against an Act of Congress—the men conspired to keep others out of work and the company to refrain from paying higher wages" (p. 852). This, as the court said, because "the big objective" of the Act is to "give work to more men, thus cutting down unemployment in general" (p. 851).

Can it be that Congress formulated a "public policy" to forbid work above 40 hours? Do the spread-the-work extremists not know that the Act does not purport to be an emergency measure and that its objectives are to be appraised in the light of permanent statesmanship? Do they not know what Congress was bound to know, that periods of scarcity of labor are sometimes

to be expected? Do they not know that Congress acted deliberately in withholding an absolute maximum on hours? Do they think that it was mere accident that the compulsion of the Act ceased upon payment of the prescribed ratio for overtime hours?

The legislative history of the Act discredits the extreme idea implied in petitioner's contention that Congress had some pervading objective which cannot be satisfied except by striking down the employment agreements in this case.

Such history is treated rather fully in the Appendix volume.

Congress recognized that spread of employment would take place principally in the lowest paid and unskilled employments, where the labor product in dollar value is so low that the employer cannot afford the added overtime pay. It was known that in the skilled employments, such as here involved, overtime rates would be paid in lieu of curtailing hours. Indeed it was known that in the skilled employments overtime pay, and even the precise formula of time and one-half, had already become a traditional policy.[32]

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[32] See the testimony of Isador Lubin, Commissioner of Labor Statistics of the Department of Labor, at the Hearings conducted jointly by the committees of the Senate and the House in charge of the bill:

> "Frankly, I would say that the number of workers directly affected by the minimum wage provision would not be in excess of 2,000,000. On the other hand, in regard to the hours, there it will depend entirely upon the regulations of the Board. If they permit overtime, and the pay of time and a half, as the bill provides, there is no way of telling what the employer will do. Is he going to take on new people, or let his present people work overtime or time and a half? * * * If you take the various industries and look at the number of hours that they are working, you will find that the industries that are employing the most people are working in excess of 40 now, and are for the most part paying overtime rates.

The members of Senate and House who were responsible for the legislation disclaimed any intent to work revolutionary change, except in the group of lowest paid, exploited workers, victims of sweatshop conditions, known as the submerged one-third, as to whom conditions of employment were shockingly substandard.

As to the many millions of skilled workers, already highly paid, it was considered that the Act merely gave statutory recognition to an overtime tradition which had long existed, and fixed a common starting point, 40 hours, for overtime pay to begin. As to them it was not thought that the problem of compliance was serious or that a disruptive change was being wrought.

Much less was it thought that employment agreements fairly entered into, recognizing the prescribed overtime ratio, accomplishing the desideratum of uniform pay, and permitting the continuance of happy employee relations of long standing, were being stricken down over the protest of employee and employer alike.

The Act was designed to encourage, not to unsettle, amicable employer-employee relations.

That would be true of steel, automobiles, and agricultural implements. Under this law they still would be permitted to work in excess of the minimum." (Hearings, pt. 2, pp. 338, 343.)

See Senator Black's modest statement in his letter to the New York Times of July 25, 1937 (Cong. Rec., vol. 81, p. 7746):

> "The net effect of this bill for labor as a whole will be incalculable. By shortening hours it will create new jobs in the unskilled categories for millions of our unskilled unemployed. By setting up better standards of wages in the interstate industries directly affected, it will indirectly create competition for labor which should affect wages in all industries where the labor is interchangeable between interstate and local industries." (Emphasis ours.)

The Act was designed to encourage free bargaining as to hours and rates of pay above the statutory minimums. It was a principal purpose of Congress to give legal sanction to contracts which surpass the minimum standards, whatever the form of such contracts as to methods of pay, and to protect the parties to such contracts from the unfair competition of "chiselers" whose employment arrangements were substandard; not to require the increase of pay which already exceeded the minimum standards.

What a distortion of the intent of Congress to convert the Act into an instrument for striking down contract arrangements which afford the very more-than-minimum standards which Congress purposed to encourage.

E.

The Claimed Administrative Construction

Petitioner urges Interpretative Bulletin No. 4 as if it constitutes an "administrative construction" in opposition to respondent's contention and as something which is entitled to great weight in inducing this Court to adopt a similar interpretation of the Act.

In fact, Interpretative Bulletin No. 4 is not responsive to the particular problem presented by this case. Its precise language is limited to cases where bookkeeping entries are made without basis in the understanding and agreement of the parties, and to salaries

which are not allocated by agreement of the parties between regular hours and overtime hours."[33]

Of course it would be a simple matter to make the Interpretative Bulletin conform exactly to the problem which is presented in this case. The same pen which wrote the complaint in this case could write an added paragraph into the Interpretative Bulletin, which then could be offered to this Court as possessing the dignity of an "administrative construction."

Such possibility reveals the thin nature of the claim of administrative interpretation in this case.

The inconclusiveness of Interpretative Bulletin No. 4 as applied to the facts of this case is indicated by the circumstance already mentioned that petitioner in his reply brief filed after the argument of this case in the circuit court of appeals felt it necessary to correct the computations of expert witness Sherrill in the trial court, and now, after filing of petitioner's brief in this Court, it is uncertain whether petitioner favors Sherrill's method of computation or the reply brief method.

Surely little respect, as constituting an administrative construction, is due a method of computation which is susceptible of conflicting applications requiring last minute correction and what now appears to be correction of the correction.

In any event, the method of computation urged here as an administrative construction is not of the character embraced within the rule of "great weight." It is not a determination of scope of jurisdiction such as

[33] The involved paragraphs of the Interpretative Bulletin are at R. 398-404.

must sometimes be made before the administrative agency may begin to exercise its functions. Especially, it is not a self-denying determination with reference to scope of jurisdiction, as that of the Interstate Commerce Commission in United States v. American Trucking Associations, 310 U. S. 534. Nor is it an interpretation of settled and long followed character. On the contrary, the problem here involved has been the subject of litigation since the first days of the Act, under a sort of a stand-by attitude awaiting final determination of the courts.

Here a problem becomes the subject of controversy immediately as the Act goes into effect. Such controversy is promptly brought to the courts for adjudication. The controversy relates to a subject matter as to which the Act confers no rule or regulation or interpretative authority on the Administrator. Is the court bound to rule in the Administrator's favor, or even to give great weight to the Administrator's controverted claim, merely because the Administrator issues an Interpretative Bulletin in favor of his side of the controversy?

II.

Construction to avoid serious constitutional objections.

Constitutionality of the Act has been sustained on the ground that the commerce power may be properly employed to prevent "spreading and perpetuating * * * substandard labor conditions," U. S. v. F. W. Darby Lumber Co., 312 U. S. 100, 110 (1941).

Thus, this Court in the Darby case:

> "Its purpose * * * is to exclude from interstate commerce goods produced for the commerce and to prevent their production for interstate commerce, under conditions detrimental to the maintenance of the minimum standard of living necessary for health and general well-being; and to prevent the use of interstate commerce as the means of competition in the distribution of goods so produced, and as the means of spreading and perpetuating such substandard labor conditions among the workers of the several states. * * * The motive and purpose of the present regulation is plainly to make effective the Congressional conception of public policy that interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions, which competition is injurious to the commerce and to the states from and to which the commerce flows. * * * We conclude that the prohibition of the shipment interstate of goods produced under the forbidden substandard labor conditions is within the constitutional authority of Congress. * * * As we have said the evils aimed at by the Act are the spread of substandard labor conditions through the use of the facilities of interstate commerce for competition by the goods so produced under the prescribed or better labor conditions * * * (312 U. S. 100, 109-110, 115, 122).

Thus constitutionality depends on the function of the Act to remedy substandard labor conditions, or, in the words of the Act, "labor conditions detrimental to the minimum standard of living necessary for health, efficiency, and general well-being of workers."

The conditions of employment which are challenged

in this suit are not substandard as concerns health, well-being or amounts of pay.

No one claims that a forty hour week is necessary in the interest of health, except possibly as to women and possibly as to men and women in some specially hazardous and depleting occupations. With such exceptions, it is admitted everywhere that longer hours than forty are fully consistent with health, well-being and maximum efficiency. Just where the maximum limit is may be the subject of dispute and varying opinion. For this purpose it is enough that such maximum limit is above forty hours and that Congress has not declared otherwise.[34]

To apply the Act to this case is to regulate wages and hours which surpass the average, much less the minimum necessary for well-being.

Petitioner's attack here stems from the fact that respondent paid added amounts to maintain a uniform weekly wage. Petitioner would admit that but for the minimum guaranty the employment contracts would satisfy every requirement of the Act and would not be "detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers," and would not contribute to the spread of "substandard labor conditions." Thus respondent is attacked because it paid more, not less, than a proper standard of labor conditions requires.

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[34] Section 7(b)(3) of the Act permitting 56 hours in some weeks is a recognition of this.

Concretely, respondent's claim is that Olin Brown, for instance, should have been paid $50.61 in the week of November 4, 1940, instead of the $45.23 actually paid. This dispute as to Olin Brown in such week comes down to the question whether overtime pay should have been based on 84¢ per hour, as petitioner claims, or 75¢ per hour, as respondent claims. Congress has not expressed any interest in wages within a span of 75¢ and 84¢. If it should do so its constitutional power would be seriously questioned."[35]

This Court has held in the Darby case that it is within the commerce power of Congress to fix minimum wages to the extent necessary to maintain a decent standard of living. It may be admitted, in addition, that it is within the commerce power to fix maximum hours to the extent necessary for health, efficiency and well-being. Further, it may be admitted that the congressional judgment of what minimum wage and maximum hours are necessary for the respective purposes is not to be overturned.

But the regulation here, as applied to this case, is not necessary, and is not declared by Congress to be necessary, for maintaining a decent standard of living, as to minimum wage, or for preserving health, efficiency and well-being, as to maximum hours. Thus all elements of unfair competition and spreading substandard conditions and the other social and welfare considerations which were held in the Darby case to be

[35] See The Federal Wages and Hours Act, 52 Harvard Law Review 646, 666, expressing the serious constitutional doubts that would arise if the Act were to be interpreted as applying to "wages or hours that are more than sufficient according to present Congressional criteria."

sufficient to sustain the minimum wage provisions, are removed. And if these considerations are removed are we not then outside of the appropriate field for exercise of the commerce power? What remains that is of concern to interstate commerce? And wherein lies the basis for impairing the liberty of contract?

Petitioner answers, in effect, that Congress would have the power absolutely to curtail hours at forty. And he points to West Coast Hotel Co. v. Parrish, 300 U. S. 379, and to the maximum hours cases cited by this Court with approval in the Darby case (310 U. S. 100, 125).

West Coast Hotel Co. v. Parrish involved a state statute fixing a minimum wage. It was held that the statute was sustainable as a health and welfare measure within the police power of the state. Only the due process clause of the Fourteenth Amendment was involved. No commerce power question was presented. Of the other mentioned cases, Holden v. Hardy, 169 U. S. 366, Muller v. Oregon, 208 U. S. 412, and Bunting v. Oregon, 243 U. S. 426, involved state laws fixing maximum hours for women or for men and women in specially hazardous and unhealthy occupations. There also the statutes were upheld as health measures within the police power of the state. Again, no question of commerce power was concerned. The last case, Baltimore & Ohio Ry. Co. v. Interstate Commerce Comm., 221 U. S. 612, involved a federal statute which provided maximum daily hours for railway operatives. The statute was upheld as a safety measure within

the commerce power of Congress to provide safe railway transportation.

Thus petitioner is unable to point to a single case upholding the commerce power of Congress as applied to a regulation of hours beyond the scope of what Congress has declared to be necessary for health, safety or well-being.

This Court in the Darby case upholding the validity of the wage and hour provisions under the Fifth Amendment said (312 U. S. 100, 125):

> "Both provisions are minimum wage requirements compelling the payment of a minimum standard wage with a prescribed increased wage for overtime of 'not less than one and one-half times the regular rate' at which the worker is employed."

If, therefore, the overtime provisions are to be treated from the point of view of a minimum wage regulation we are left with the same problem of where to find the congressional power for fixing wages above the amount necessary to maintain "the minimum standard of living necessary for health, efficiency and general well-being of workers." For the dispute in this case turns not on a claim that respondent has failed to pay the minimum wage but on the claim that the overtime rate of pay, admittedly one and one-half times the minimum wage or greater, must be increased to a still higher rate in violation of the employment contracts, and over the protest of the contracting parties.

The statement of Senator Borah, in the debates, is pertinent here:

> "We are not dealing here with anything except minimum wages, and those in my opinion are fixed upon one general principle and that is the amount of wages necessary to maintain a family and build up and maintain the citizenship of the country. That is all we are dealing with. * * * Mr. President, I do not say that there is not a serious constitutional question involved in this suit. I know there is. But it does not have relation to the power of fixing the minimum wage. Upon that question we have the full constitutional power to do what we have done. I would not undertake to say that some of the other questions do not raise a constitutional question. But I do say that so far as the power of the national government to fix a minimum wage for those engaged in interstate commerce, it is just as full and complete and plenary as the power of the state to fix it in intrastate commerce." (Cong. Rec., vol. 83, p. 9176.)

Also pertinent here is the testimony of then Assistant Attorney General Jackson, quoted at some length in the Appendix, given at the hearings of the joint committees, expressing the grave constitutional doubts which would arise if the Act should go beyond minimums and beyond a fair quantum meruit basis in regulating wages.

Of course on familiar principles of interpretation such doubts of construction as may exist with respect to the Act should be resolved in favor of the construction which would avoid the constitutional questions.

III.

Respondent's newspaper employees are not engaged in interstate commerce or in the production of goods for interstate commerce within the coverage of the Act.

Respondent's newspaper activities are conducted at a separate plant and with wholly separate employees from its radio activities. Hence the newspaper employees are to be treated separately from the radio employees in determining whether the Act is applicable. The injunction which petitioner seeks extends to both sets of employees alike and cannot be sustained unless the Act is applicable to both.

The point here is not whether respondent's operations may be deemed to have some *effect* on interstate commerce or whether Congress would be without constitutional power to extend the application of the Act to respondent's operations if it wished.

The point is that the Act by its terms does not apply to operations which merely *affect* interstate commerce and so does not apply to respondent's newspaper employees.

The Act applies by its terms only to those employees who actually are "engaged in commerce or in the production of goods for commerce."

In this respect the Act differs from the National Labor Relations Act, the federal anti-trust laws, the National Industrial Recovery Act and other similar legislation. The Act is similar in this respect to the Federal Trade Commission Act.

Thus the National Labor Relations Act prohibits "from engaging in any unfair labor practices *affecting* commerce." (29 USCA, Sec. 160.)

Similarly, NIRA extended to transactions "in or *affecting* interstate or foreign commerce."

Similarly, the landmark decisions on the commerce power of Congress arising under the anti-trust laws, were concerned with the question whether the challenged monopoly was such as to exercise "some direct and immediate *effect* upon interstate commerce." Hopkins v. U. S., 171 U. S. 578, 592; Swift v. U. S., 196 U. S. 375, 397; United Mine Workers v. Coronado, 259 U. S. 344, 408; United Leather Workers v. Herkert, 265 U. S. 457, 471; Industrial Assn. v. U. S., 268 U. S. 64, 77; Levering & G. Co. v. Morrin, 289 U. S. 103, 107.

The expansive coverage of the above mentioned legislation is to be contrasted with the restricted coverage of the Fair Labor Standards Act.

The distinction here was recently applied by this Court in Federal Trade Commission v. Bunte Bros., 312 U. S. 349. The Federal Trade Commission Act forbids unfair methods of competition "in commerce." It does not extend the power of the Commission to unfair trade practices which "affect" commerce. On this ground this Court held that Congress had not attempted to extend the Act to a manufacturer in Illinois who was guilty of an unfair trade practice, but who sold all his product within the state, even though Congress would have had the constitutional power to reach such a manufacturer because he competed with other man-

ufacturers who are engaged in interstate commerce. The opinion points out that such extension of the power of the Federal Trade Commission would be an "inroad upon local conditions and local standards of such far-reaching import," that it "ought to await a clearer mandate from Congress. * * *. This case presents a narrow question of what Congress did, not what it could do." (312 U. S. 349, 355.)

This same distinction was recently applied to the Fair Labor Standards Act, Jewel Tea Co. v. Williams, 118 Fed. (2d) 202, 206 (C. C. A. 10th, 1941), where the court said:

> "The act by its terms is limited to employees engaged in interstate commerce or in the production of goods for interstate commerce. It does not extend to employment that merely affects interstate commerce. If there could be doubt as to the correctness of this interpretation, it is set at rest by the legislative history of the Act."

Thus the opinion of this Court holding the Associated Press to be subject to the National Labor Relations Act, Associated Press v. National Labor Relations Board, 301 U. S. 103, 128, and the opinion of the Circuit Court of Appeals for the Fourth Circuit, holding the Baltimore Sun to be subject to the National Labor Relations Act, National Labor Relations Board v. A. S. Abell Co., 97 Fed. (2d) 951 (C. C. A. 4th, 1938), upon which petitioner chiefly relied in the Circuit Court of Appeals, do not compel a similar conclusion as to the Fair Labor Standards Act.

Of course, the publishing of a newspaper is predominantly a local operation in that the entire process is

confined within the four walls of a plant which functions like a manufacturing plant, receiving raw materials to be processed within the confines of the plant and selling the finished product at the door of the plant.

It is undisputed that only 1.7% of the finished product in this case finds its way outside of the state where the plant is located. A manufacturing operation has never been held by this court to constitute interstate commerce even when the entire output goes outside the state, much less when only a nominal part goes outside the state.

So petitioner would resort to the technique of putting respondent into the "flow of commerce." Petitioner would point to the receipt by respondent of a volume of news, features, advertising and newsprint paper from without the state and to respondent's use of the "channels of interstate communication" as creating the "stream of commerce." By this means petitioner would seek to attribute to respondent the same interstate function which was held sufficient to subject the Associated Press to the National Labor Relations Act.

But it has already been pointed out that the "flow of commerce" concept is useful only when the effort is to discern an *effect* on interstate commerce. Almost all manufacturing businesses, however local, receive raw materials from outside the state and employ telephone, telegraph and the mails. These elements, in some combinations, and as to some businesses more or less strategically situated, have been held to place a manufacturer in the flow of commerce, but only in

the National Labor Relations Board cases and only when the question is whether an interruption of the business or competition by the business can be said to *affect* interstate commerce. These elements have never been held sufficient to convert a business into one "engaged in interstate commerce."

Moreover, even if "flow of commerce" were a proper concern in this case, it is common knowledge that a wide difference exists between the function of the Associated Press in receiving and distributing news throughout the country and the function of a newspaper. The whole function of the one is "commercial intercourse." As to the other the "commercial intercourse" is merely incidental. The primary function is the manufacturing operation involved in reproducing news, editorial comment and advertising matter on paper and the selling operation involved in distributing the finished product.

This difference is pointed out by the court in the Baltimore Sun case, above mentioned, 97 F. (2d) 951, 954, where it is said that the business of the Associated Press is both to collect and distribute news, making a continuous flow of interstate communication, whereas the Baltimore Sun is merely on the receiving end, the flow of communication ceasing upon receipt of the news into the publisher's plant. Of course, in a sense, flow is resumed when the newspaper goes on the street, but the interruption has been such, and the new form of the news is so different from the old, that the conception of continuous flow becomes metaphysical. Moreover, the flow is no longer interstate unless some sub-

stantial portion of the newspapers are sold outside of the state.

The record does not show what percentage of the total content of a regular edition of The Dallas Morning News consists of news matter, features and advertising which originate from without the State. It is common knowledge, however, that such front page news and out-of-state material constitute only a small fraction of the entire content. Local news, local advertising, special stories and features written by staff employees plus Press Association reports originating from sources within the state, make up the chief content of all city newspapers. The record does show that only from 16.4% to 18.8% of the total lines of paid advertising is national advertising, that is to say, advertising of products produced outside the State and distributed within the State, and that such advertising represents only 16% to 17% of the gross advertising revenue, and that the gross advertising revenue is only half of total revenue (R. 379-380, 385-386). The evidence shows higher percentages as to the Semi-Weekly Farm News, but publication of such paper was discontinued on December 31, 1940. Since the injunction sought by petitioner looks wholly to the future, the facts as to such paper are not of consequence.

The evidence does show that approximately 70% of the Associated Press and United Press stories received into the office of the News originate from without the State, but from the whole volume of news stories so received respondent selects only a small percentage for

printing. Naturally local and in-state items are of greater interest to local readers on the whole and the percentage of out-of-state Associated Press and United Press stories actually used would be much smaller than 70% of the total news volume received through such Press Associations. The record does not show what the percentage is.

When attention is directed to what the *employees* do —whether *they* are engaged in interstate commerce, which is the statutory test—the difficulty of finding the interstate commerce only increases. The employees include reporters whose sole concern is the obtaining of local news, editors and rewrite men whose sole concern is editing local news and preparing it for the presses, paper handlers whose sole concern is with rolls of newsprint paper received at the plant after interstate transportation has ceased, electricians and mechanics whose sole concern is maintenance of machinery, elevator operators, clerks whose sole concern is handling of classified advertising originating wholly within the State or collecting accounts originating wholly within the State and numerous other employees who do not function at all in connection with the receipt of news or anything else through the channels of interstate communication.

Yet the injunction sought by petitioner is applicable to all employees alike and is not sustainable unless all are actually engaged in interstate commerce.

In spite of liberal use of the "flow of commerce"

concept to uphold federal regulation[36] no case yet has gone so far as to hold that the sale in interstate commerce of as little as 1.7% of a manufacturer's product sets up a flow of commerce or that imports of raw materials in interstate commerce for local manufacture set up a flow. Indeed, the difference between exportation of finished product and importation of raw materials is the line of distinction between the cases cited in the note and Schechter Corp. v. U. S., 295 U. S. 495, in which interstate commerce was involved only in the importation. The Schechter case has not been overruled by the later decisions cited in note 36 and is cited with approval in many of them as if to hold firm to such line of distinction.

The question remains whether the employees are engaged in the production of goods for commerce.

Somewhere a line is to be drawn between sale of a substantial volume of goods beyond state lines such as to bring the producer within the Act and shipment of such inconsequential amounts as not to bring the Act into operation. The question becomes one of degree, depending upon the consequence of the out-of-state sales.

In this case the record shows that only 1.7% of

[36] National Labor Relations Board v. Jones and Laughlin Steel Corporation, 301 U. S. 1 (1937), National Labor Relations Board v. Fruehauf Trailer Co., 301 U. S. 49 (1937), Associated Press v. National Labor Relations Board, 301 U. S. 103 (1937), National Labor Relations Board v. Friedman-Harry Marks Clothing Co., 301 U. S. 58 (1937), Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197 (1938), Santa Cruz Fruit Packing Company v. National Labor Relations Board, 303 U. S. 453 (1938), National Labor Relations Board v. Fainblatt, 306 U. S. 601 (1939), National Labor Relations Board v. Bradford Dyeing Association, 310 U. S. 318 (1940), (all dealing with National Labor Relations Act); Mulford v. Smith, 307 U. S. 38 (1939), Currin v. Wallace, 306 U. S. 1 (1939) (dealing with Agricultural Adjustment Act of 1938).

respondent's circulation goes outside of the state (R. 378). This fraction would seem to be inconsequential if not actually de minimis.

In Santa Cruz Fruit Packing Co. v. National Labor Relations Board, 303 U. S. 453, 466-467, where the interstate sales were 37%, this Court had to analyze the facts of the impact of the company's operations on interstate commerce to find that even such percentage was sufficiently substantial to have an *effect* on interstate commerce. And in the Baltimore Sun case, supra, 97 F. (2d) 951, 954-955, the court had to rely on other activities than the sale of the small percentage of the Baltimore Sun circulation beyond the state line to find an *effect* on commerce, although both the fractional volume and total volume were larger in that case than in this.

Since the statutory test is directed at the activity of the employee, not the employer, the question may narrow down as to a particular employee to this: Is John Smith, an elevator operator, engaged in the production of goods for interstate commerce merely because he facilitates the work of others who share in the production of a commodity of which 1.7% is sold outside the state? The common sense answer would seem to be "No". Indeed, it would be hard to find that his employment affects commerce, much less that it is commerce or is the production of goods for commerce.

It is true that this Court in the Darby Lumber Co. case said that the Act applies to a small manufacturer as well as a large one because the total effect of un-

fair competition of many small producers operating under substandard labor conditions may be great. But the court has not said that the principle of de minimis is not to be applied when the quantity of the product of a single manufacturer sold in interstate commerce is inconsequential in relation to the whole of such manufacturer's product.

The legislative history of the Act contains some helpful information on this score.[37]

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[37] Then Assistant Attorney General Jackson testified on the subject in the Joint Hearings before the committees of Congress (Joint Hearings, Pt. 1, pp. 81-82) as follows:

"REPRESENTATIVE CONNERY. Now, what about the newspaper business? Would the editorial staff and printers in the newspaper establishment itself—would they come under this, and how far do these go down? To the newsboys, or what?

"MR. JACKSON. If the newspaper moved in interstate commerce, the persons who were engaged in its production would come under the act.

"REPRESENTATIVE CONNERY. I am very much interested in this, because back in the A. P. case it involved that. Are you taking it from the standpoint of view of the newspaper itself, that it must go over a State line, or are you taking it by telephones and radio and that picture of them getting their news through the A. P., and all that?

"MR. JACKSON. **It would not seem to me, although I have never investigated the subject, that the fact that the newspaper got its news from an out of the State source would be sufficient to make the newspaper itself in interstate commerce.**

"REPRESENTATIVE CONNERY. How about the guild? The fellow that was in the guild?

"MR. JACKSON. The fellow that was in the guild was engaged by the Associated Press in the collection of news from all States, centralized it and sent it out. He was in the flow. But where a newspaper is getting its news in by wire, some of it, perhaps, from New York and some of it from Chicago, **I do not think that the fact that they get it by wire would be sufficient to make the newspaper itself engaged in interstate commerce.** There might be other conditions—I don't know what they are, and I don't know what their contracts are.

"REPRESENTATIVE CONNERY. Suppose the Boston Post ships up into New Hampshire. They do.

"MR. JACKSON. When it crosses the line, it is an act of interstate commerce.

"REPRESENTATIVE CONNERY. How would that affect the employees?

"MR. JACKSON. That would affect the employees just as any

IV.

Respondent is exempt from the Act as a service establishment.

No one buys a newspaper for the value of the material object. Rather, he buys it for the information that the object contains. The transaction is essentially that of providing a service to the reader.

---

others would be affected by this Act.

"REPRESENTATIVE CONNERY. How about the reporters?

"MR. JACKSON. They can come under the group of professionals. It does not affect employees who are engaged in a private capacity. I don't know whether the newspapermen consider that they are engaged in a professional capacity or if they are engaged at such low wages as not to come within the bill.

"REPRESENTATIVE CONNERY. Suppose they went into a labor organization, or suppose they have a guild, all of the reporters, and suppose just for the sake of argument, that their wages are down pretty low, would they come under it then? Could you set a definite minimum wage, in other words, for your newspaper reporters. I don't mean these 'big shot' fellows, but I mean the small-town fellows.

"MR. JACKSON. It would be a matter of interpretation, and different minds might disagree on it. I would not think that the newspapermen would be included, because I would regard them as a profession.

"REPRESENTATIVE CONNERY. But you would say that those Boston Post linotype operators, the men who were engaged in actually getting out the paper, printing the paper, with the machines and all, would be in it?

"MR. JACKSON. I think they would."

And Senator Black (Cong. Rec., vol. 81, pp. 7648, Appendix 1480):

"So the bill, insofar as it relates to maximum hours of employment and minimum wages, is limited, except to the small extent I have heretofore indicated, to goods which are actually manufactured for transportation and are transported in interstate commerce. We therefore eliminate in the beginning any idea that this is an effort to regulate wages and hours in the various service establishments throughout the nation.

"That is done for two reasons. In the first place, the bill rests squarely upon the interstate commerce clause of the Constitution. In the second place, I believe it was the prevailing sentiment of the Committee, if not the unanimous sentiment of the Committee, that businesses of a purely local type which serve a particular local community, and which do not send their products into the streams of interstate commerce, can be better regulated by the laws of the communities and of the states in which the business units operate." * * *

"It [the bill] does not apply to workers in purely local services like restaurants and hotels and laundries and stores and newspapers. All these are left to the states to handle." (All emphasis ours.)

A sale is a transfer of property from one person to another for a consideration. A service is the furnishing of something useful to the recipient, where transfer of ownership may be involved, but is subordinate to the value of the service. A man who polishes an automobile transfers ownership of a certain amount of wax, but it is the polished appearance which is purchased, not the wax. A restaurant which sells food transfers ownership of the food, but, as has been held, the restaurant is a service institution because it is satisfaction or pleasing of appetite which is the real subject of the relationship with the patron. The use of telegraphic service and publication of the Federal Register are similar examples. So, the buyer of a newspaper acquires title to an object, but he pays for, and wants, and buys, the news, not the object on which the news is printed.

This distinction between service and non-service institutions is illustrated in cases arising under sales tax statutes, such as Child's Dining Hall Co. v. Swingler, 197 Atl. 105 (Md., 1938); Washington Printing and Binding Co. v. State, 73 Pac. (2d) 1326 (Wash., 1937). In the last mentioned case it was held that the printing of tariffs on order of a railroad bureau was not a sale but a service within the meaning of a sales tax act. The court held that the printer "was not selling its paper and ink to the bureau, but was furnishing its skill and labor * * *" (73 Pac. (2d) 1326, 1328).

Indeed, the question would seem to be rather free from doubt except for the fact that the Act, in ex-

pressly exempting certain newspapers of less than 3,000 circulation, would seem by inference to include other newspapers. Thus a conflict is presented between such inferential inclusion on the one hand and express exclusion of service institutions on the other hand.

It is submitted that such conflict should be resolved in favor of the exclusion. No one knows what choice Congress really intended to make as between the express exclusion and the inferential inclusion. But it is not unlikely that those who suggested the exemption in favor of small newspapers did not know whether newspapers generally would be held by the courts to be service institutions and inserted the exemption in favor of small newspapers to make doubly certain.

Especially would this choice seem proper in the light of the expressed opinions announced in the Committee hearings and on the floor of Congress as quoted at pages 81 and 82, supra.

CONCLUSION

Wherefore, respondent prays that the orders of the two courts below be in all things affirmed.

Respectfully submitted,

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March, 1942.

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No. 622

In the Supreme Court of the United States

October Term, 1941

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

A. H. BELO CORPORATION, RESPONDENT

APPENDIX TO BRIEF FOR RESPONDENT

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PART I.

Fair Labor Standards Act of 1938, 52 Stat. 1060 (29 U. S. C. §§201 et seq.):

§2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power. * * *

§6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—

(1) during the first year from the effective date of this section, not less than 25 cents an hour,

(2) during the next six years from such date, not less than 30 cents an hour,

(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 8, whichever is lower, * * *

§7. (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at

a rate not less than one and one-half times the regular rate at which he is employed.

(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed— * * *

(3) for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year in an industry found by the Administrator to be of a seasonal nature,

and if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed. * * *

§13. (a) The provisions of sections 6 and 7 shall not apply with respect to (1) any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator); or (2) any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce; * * * (8) any employee employed in connection with the publication of any weekly or semiweekly newspaper with a circulation of less than three thousand the major part of which circulation is within the county where printed and published; * * *

§16. * * *

(b) Any employer who violates the provisions of section 6 or section 7 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

§18. . * * * No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.

PART II.

LEGISLATIVE HISTORY

The legislative history begins on May 24, 1937, First Session of the 75th Congress, continues through the Second Session (Special) of the same year and concludes on June 25, 1938, at the Third Session of the same Congress.

The Beginnings—May 24, 1937

The legislation was initiated on May 24, 1937, with the President's "ill-nourished, ill-clad, and ill-housed" message which was laid before the Senate on that day.

The objectives of the Act, largely summed up in the reference to the ill-nourished, ill-clad and ill-housed, are further expressed in such message as follows:

> "The time has arrived for us to take further action to extend the frontiers of social progress.
>
> * * *
>
> "The overwhelming majority of our population earns its daily bread either in agriculture or in industry. One-third of our population, the overwhelming majority of which is in agriculture or industry, is ill-nourished, ill-clad, and ill-housed.
>
> * * *
>
> "Today you and I are pledged to take further steps to reduce the lag in the purchasing power of industrial workers and to strengthen and stabilize the markets for the farmers' products. The two go hand in hand. Each depends for its effectiveness upon the other. Both working simultaneously will open new outlets for productive capital. Our Nation, so richly endowed with natural resources and with a capable and industrial population, should be able to devise ways and means of insuring to all our able-bodied working men and women a fair day's pay for a fair day's work.

A self-supporting and self-respecting democracy can plead no justification for the existence of child labor, no economic reason for chiseling workers' wages or stretching workers' hours. * * *

"And so to protect the fundamental interests of free labor and a free people we propose that only goods which have been produced under conditions which meet the minimum standards of free labor shall be admitted to interstate commerce. Goods produced under conditions which do not meet rudimentary standards of decency should be regarded as contraband and ought not to be allowed to pollute the channels of interstate trade. * * *

"Practical exigencies suggest the wisdom of distinguishing labor conditions which are clearly oppressive from those which are not as fair or as reasonable as they should be under circumstances prevailing in particular industries. Most fair labor standards as a practical matter require some differentiation between different industries and localities. But there are a few rudimentary standards of which we may properly ask general and widespread observance. Failure to observe them must be regarded as socially and economically oppressive and unwarranted, under almost any circumstance.

"Allowing for a few exceptional trades and permitting longer hours on the payment of time and a half for overtime, it should not be difficult to define a general maximum working week. Allowing for appropriate qualifications and general classifications by administrative action, it should also be possible to put some floor below which the wage ought not to fall. There should be no difficulty in ruling out the products of the labor of children from any fair market. And there should also be little dispute when it comes to ruling out of the interstate markets products of employers who deny to their workers the right of self-organi-

zation and collective bargaining, whether through the fear of labor spies, the bait of company unions, or the use of strike breakers. The abuses disclosed by the investigations of the Senate must be promptly curbed. * * *

"As we move resolutely to extend the frontiers of social progress, we must be guided by practical reason and not by barren formulae. We must ever bear in mind that our objective is to improve and not to impair the standard of living of those who are now undernourished, poorly clad, and ill housed.

"We know that overwork and underpay do not increase the national income when a large portion of our workers remain unemployed. Reasonable and flexible use of the long-established right of Government to set and to change working hours can, I hope, decrease unemployment in those groups in which unemployment today principally exists.

"Our problem is to work out in practice those labor standards which will permit the maximum but prudent employment of our human resources to bring within the reach of the average man and woman a maximum of goods and of service conducive to the fulfillment of the promise of American life.

"Legislation can, I hope, be passed at this session of the Congress further to help those who toil in factory and on farm. We have promised it. We cannot stand still." (75th Cong., 1st Sess., Senate Journal, p. 300.)

The emphasis here on eliminating sweatshops and substandard wages is plain. The problem of unemployment is mentioned only once and then only to express the hope, at the end of the message, that decrease of unemployment *in some groups* might be a consequence of the legislation. The groups referred to, "in which

unemployment today principally exists," are the groups of unskilled workers, largely upon relief rolls. In such groups hours were overlong and pay was very low. In such groups payment of overtime rates of pay was uneconomic and some spreading of work might reasonably be expected in spite of "permitting longer hours on the payment of time and a half for overtime."

Is the mentioned hope, so modestly expressed as a possible consequence of the Act, as applied to some groups, to be converted into a direct objective of such compelling force as to require the extraordinary application of the Act urged by petitioner?

On the same day of the special message substantially identical bills were introduced by Senator Black, S. 2475, and Representative Connery, H. R. 7200. The Senate bill, hereinafter called the Original Bill, was referred to the Committee on Education and Labor. The House bill was referred to the Committee on Labor.

The Original Bill

The Original Bill, styled Fair Labor Standards Act of 1937, contained this declaration of legislative purpose:

> "Section 1. (a) The employment of workers under substandard labor conditions in occupations in interstate commerce, in the production of goods for interstate commerce, or otherwise directly affecting interstate commerce (1) causes interstate commerce and the channels and instrumentalities of interstate commerce to be used to spread and perpetuate among the workers of the several States conditions detrimental to the physical and economic health, efficiency, and well-being

of such workers; (2) directly burdens interstate commerce and the free flow of goods in interstate commerce; (3) constitutes an unfair method of competition in interstate commerce; (4) causes industrial dislocations directly burdening and obstructing interstate commerce and diverting interstate commerce from areas in which fair labor standards are maintained to areas in which such substandard labor conditions exist; (5) leads to labor disputes directly burdening and obstructing interstate commerce and the free flow of goods in interstate commerce; (6) causes undue price fluctuations impairing the stability of prices of goods in interstate commerce; and (7) directly interferes with the orderly and fair marketing of goods in interstate commerce.

"(b) The correction of such conditions directly affecting interstate commerce requires that the Congress exercise its legislative power to regulate commerce among the several States by prohibiting the shipment in interstate commerce of goods produced under substandard labor conditions and by providing for the elimination of substandard labor conditions in occupations in and directly affecting interstate commerce." (Senate bill S. 2475, pp. 1-3.)

Here is no mention at all of an objective to spread the work. Contrast such statement of purpose with what would have been specified in an act designed to relieve unemployment by sharing the work.

The Original Bill created a five man Board to administer the Act. Congress was to fix a minimum wage and a maximum workweek (such figures being left blank in the bill as introduced) to become applicable if and when the Board should direct and to such particular employments as the Board should direct. Such were to be minimum standards below which wages

and hours were "oppressive." In addition, the Board was directed to fix higher standards than such minimums based upon special studies of particular industries and appropriate differentials of all kinds, below which wages and hours were "substandard." The Board was authorized to vary both the "oppressive" and the "substandard" minimums downward or upward, but not upward beyond $1,200.00 per year or 80¢ per hour, as to wages, or "_____ hours" per week, as to hours.

The maximum hours requirements were subject to overtime provision as follows:

> "Unless an applicable order of the Board under this section or any other section of this Act shall otherwise provide, the maintenance among employees of an oppressive or substandard workweek shall not be deemed to constitute a substandard labor condition if the employees so employed receive additional compensation for such overtime employment at the rate of one and one-half times the regular hourly wage rate at which such employees are employed. But the Board shall have power to make an order determining that the maintenance of such overtime employment in any occupation, except upon such terms and conditions if any as are contained in such order, shall constitute a substandard labor condition for the purpose of any one or more provisions of this Act if and to the extent that the Board finds that the maintenance of a workweek that is not oppressive or substandard in such occupation is necessary or appropriate in order to carry out the purpose, or prevent the circumvention, of such provision or provisions of this Act. Any such order may contain such terms and conditions relating to overtime employment, including the wage rates to be paid therefor, as the Board shall consider neces-

sary or appropriate in the occupation affected."[1] (ibid., pp. 17-18.)

Reparation for violation of the quoted overtime requirement was as follows:

> "If any employee is employed for more hours per week than the maximum workweek required to be maintained by any provision of this Act or of a labor-standard order, he shall be entitled to receive as reparation from his employer additional compensation for the time that he was employed in excess of such maximum workweek at the rate of one and one-half times the *agreed* wage at which he was employed or the minimum wage, if any, for such time established by this Act, or by an applicable labor-standard order, whichever is higher, less the amount actually paid to him for such time by the employer." (Emphasis ours) (ibid., p. 37.)

Child labor under 16, and in some circumstances, under 18, was prohibited; also the use of strikebreakers and labor spies was forbidden.

Such Bill differed from the Act as finally adopted in that it vested wide powers in an Administrative Board to fix and change minimum standards, to recognize differentials among industries and territorial regions and even to over-ride the congressional standards when found by the Board to be "justifiable" or "necessary * * * to carry out the purpose or prevent the circumvention" of the Act.

The central idea of a minimum wage for regular time and time and one-half pay for overtime was ex-

[1] It will be noted that the Board was authorized in exceptional circumstances to impose an absolute maximum on hours. Such possibility was not treated as substantial and was not even commented on in the Hearings or in debate, and was wholly eliminated in later drafts of the bill and, of course, in the bill which was finally enacted.

pressed in the Original Bill substantially as in the Act to be finally adopted by Congress thirteen months later.

The language of the Original Bill,

> "additional compensation for such overtime employment at the rate of one and one-half times the regular hourly wage rate at which such employees are employed"

appears in this form in the Act,

> "unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

And the language of the penalty section of the Original Bill,

> "receive as reparation from his employer additional compensation for the time that he was employed in excess of such maximum workweek at the rate of one and one-half times the *agreed* wage at which he was employed"

appears in this form in the Act,

> "liable to the employee or employees affected in the amount of * * * their unpaid overtime compensation * * * and in an additional equal amount as liquidated damages."

The quoted language of the Original Bill furnishes an important clue to the meaning of "regular rate" of pay. The penalty section in prescribing reparation for failure to pay one and one-half times "regular rate" of pay authorized recovery of "one and one-half times the *agreed* wage at which he was employed." *Agreed* wage is used as the equivalent of the "regular rate."

Thus the intention appears in the very first draft

that regular rate of pay shall be the subject of agreement between employer and employee and that such agreed wage shall measure the prescribed overtime pay.

Hearings—June, 1937

Joint hearings on the proposed legislation were held by the two Committees of Congress from June 2 to June 22, 1937. Such hearings are reported in three volumes comprising 1,222 printed pages.

The first and principal witness was Mr. Robert H. Jackson, then Assistant Attorney General.

Mr. Jackson's analysis of the purposes of the Bill may be summarized by quoting from his testimony as follows (Hearings, Part I, pp. 1-62.):

> "For years we have heard easy lip service 'in principle' to the commonplace that it is bad for America — economically as well as socially — to have child labor, sweated labor, low standards of living, inhuman and unhealthy working conditions.'
>
> "Today we are considering something more than 'approval in principle' of these ideas. We have an effort, in the specific and exact terms of a bill, to make this devotion to ideals statutory instead of merely rhetorical. * * * (p. 1.)
>
> "I undertake this discussion in what I hope will be a realistic way, on the assumption that these committees are interested in finding a way to insure decent labor conditions for the submerged third of our population. * * * (p. 2.)
>
> "What, then, may be said of the employer who cuts wages, employs children, and sweats labor, for the purpose of gaining competitive advantage in marketing his product in an interstate market? * * * Since Congress has the power to regulate

conditions of competition as it has done through the anti-trust acts, it may likewise prohibit the securing of a competitive advantage in interstate commerce through the adoption of oppressive and sweatshop labor conditions.

"It will be noted that Part IV of this bill proceeds upon this theory and its provisions may be sustained without overruling the Child Labor case. The factual basis for this view is that by prohibiting the use of substandard labor conditions by those who compete with the employers who use fair labor standards, the great majority of employers who really desire to treat labor fairly are thereby protected against the unfair methods of competition of those who utilize sweatshop methods to gain a competitive advantage. * * *

"The power to regulate commerce includes the power to eliminate labor conditions which lead to labor disputes which will directly burden or obstruct commerce (National Labor Relations Board v. Jones & Laughlin). This power is invoked in eliminating excessive hours, inadequate pay, and child labor insofar as they tend to provoke such labor disputes. * * *

"The power to regulate commerce has been held to include power to eliminate a condition which affects the movement of goods. * * * This bill invokes this power by eliminating from interstate commerce goods produced by substandard labor conditions which affect interstate commerce in the manner stated." * * * (p. 3.)

"Care has been taken to hold the pending bill to a good faith regulation of interstate commerce, and nothing more. * * *

"All of the labor practices attacked by this bill are related. All are types of oppression utilized for the purpose of gaining unfair advantage in interstate commerce. One employer cuts wages, while another employs child labor, and still an-

other employs sweatshop conditions, and all of these practices are a part of the vicious competition used in forcing down labor standards which it is appropriate to treat together in the regulation of interstate commerce. * * * (p. 7.)

"It is hard to see how employers who wish to maintain decent labor standards, or those who wish to see a better level of purchasing power in the masses of the people, can feel aggrieved at the general purposes and effects of this bill. * * *

"Neither in its general scope nor in its special treatment of particular cases can the bill be pronounced arbitrary. For fair labor standards are required to be maintained only to the extent necessary in order to accomplish the interstate commerce purposes of the legislation—purposes which fall clearly under the regulatory power of the Congress under the commerce clause. * * * (p. 9.)

"* * * we may reasonably hope that after being balked a score of years, Congress will now be sustained in adding to the list of interstate contraband what Mr. Justice Holmes so aptly called 'the product of ruined lives,' and in establishing commerce among the States on the basis of industrial justice to disadvantaged men. * * *

"Let us assume, for the sake of an example, that the Congress fixes 40¢ an hour as the basic minimum non-oppressive wage and 40 hours a week as the basic maximum workweek. That would be $16.00 for a 40 hour week or $800.00 for a year of 50 weeks. It will scarcely be questioned that in most sections of the country a worker with $800.00 a year will have no more than is necessary to provide a minimum standard of living to maintain himself and his family. It is also to be noted that the Board cannot fix even a minimum fair wage which yields an annual income in excess of $1,200.00. That means that the Board cannot fix a wage in excess of 60¢ an hour for a worker employed 50 weeks a year. A higher

hourly rate may be fixed in occupations which do not give the worker full employment but such hourly rate can in no case be in excess of 80¢. It is clear that the bill protects only poorly paid workers who are not in position to protect themselves." (p. 10.)

And in the colloquy which followed the prepared statement:

"THE CHAIRMAN. If I get the idea which you have advanced it is this, that while the labor of children might not be sufficient in the quantity of goods produced to create a burden on the free flow of interstate commerce by reason of maladjustments, that the cumulative effect of the product of child labor, or the evil result of long hours and sweatshop labor conditions might all, taken together, create a burden on interstate commerce * * * (p. 15). In other words, if the practice of child labor, if the practice of unnecessarily long hours, if the practice of sweatshop wages all contribute largely to reduce the purchasing power of the workers of the Nation, that might, in itself, be considered to create a burden on interstate commerce.

"MR. JACKSON. Yes. * * * (pp.15-16.)

"SENATOR WALSH. Is not the theory upon which this bill is based that a State may produce, under whatever labor conditions it chooses, any kind and all kinds of goods or profit without interference by the Federal Government so long as those goods never cross a State border, but the moment one box of hosiery, one hat, or one ton of coal passes a State border that moment the Federal Government has control over the working conditions in the establishment, or the place of production in the particular State?

"MR. JACKSON. Well, it does not go quite as far as that in one respect, and it goes a little further in another respect.

"SENATOR WALSH. Let me have your views on that.

"MR. JACKSON. The movement of the box of hosiery across the State line would not give the Federal Government control in the factory except to the extent of practices that affected interstate commerce, as hours of labor, amount of wages, and so forth.

"SENATOR WALSH. Sweatshop conditions?

"MR. JACKSON. Yes. That is, there might be many things in the factory that would not be regulated. * * * (p. 16.)

"REPRESENTATIVE DUNN. Mr. Jackson, is it not a fact that the main intent of this bill is to wipe out the sweatshop, abolishing child labor, and increasing the standard of living for the working men?

"MR. JACKSON. That is true. * * *

"MR. JACKSON. Your illustration is so far above the minimum which the Board is permitted to deal with that the situation would not be affected, because the purpose of the minimum-wage bill is not to help the man who already has been able, by collective bargaining, to establish a fair wage. * * * In other words, the dealing with the minimum wages does not deal with the people getting wages in the higher brackets. * * * (p. 30.)

"The whole purpose of this bill is to elevate the floor, so to speak, below which wages must not go. Certainly there is no purpose here to nullify the effects of collective bargaining for that has resulted in a better minimum fair wage for workmen. * * * (p. 39.)

"On page 17, provision 6 (b) refers to the substandard workweek, and in connection with that perhaps the most important thing to note is that an automatic check is provided of this substandard workweek in requiring time and a half for

overtime. It is felt that experience demonstrates that if time and a half is required for overtime, overtime work will not be used except where it is reasonably necessary. * * * (p. 50.)

"Briefly stated without regard to qualifying detail, the bill proposes to bar from the channels of interstate commerce the products of child labor and of workers employed for unduly low wages, unduly long hours, or under conditions which violate the rights of labor by the use of strikebreakers or spies. The bill further authorizes action to require the elimination of substandard wages and hours, child labor, and other oppressive labor practices which place goods produced under fair labor conditions at a competitive disadvantage in interstate markets, or which lead to labor disputes that burden interstate commerce or disrupt the orderly and fair marketing of goods in interstate markets.

"The bill, therefore, calls for the exercise of the constitutional power of the Congress to regulate commerce among the States, for the purpose of putting a stop to traffic among the States in goods produced under substandard labor conditions and of giving protection to commerce among the States in goods produced under fair labor standards—standards which we would like to regard as American standards of labor. * * * (pp. 54-55.)

"Section 21 provides for the payment of reparation to employees who have been paid lower wages or employed for longer hours than the applicable standards allow. In the case of wages this reparation amounts to the difference between the wage received and that which should have been paid. In the case of hours, additional compensation is required for the overtime at the rate of one and one-half times the regular wage" (pp. 61-62).

Again the emphasis is on abolition of sweatshop conditions and maintenance of fair wages. Nowhere is spreading of the work specified as an objective of

the Bill. Relief of unemployment receives barest mention and then merely as a possible consequence of the Bill to be hoped for as a result of increasing purchasing power through the pay provisions of the minimum wage and overtime sections.

Express recognition is given to the fact that the maximum hours provisions of the Bill are fully satisfied by added one-half payment for overtime. And the language of the reparation section—agreed wage—is treated as an equivalent statement of regular wage.

In all the full and elaborate exposition of the Bill, there is nothing to presage the extreme position of petitioner in this case.

Isador Lubin, Commissioner of Labor Statistics of the Department of Labor, was a witness in the Hearings and was asked the direct question what effect the Bill might be expected to have on unemployment. After stating the objectives of the Bill as follows:

> "In going over this legislation I am convinced that something of this sort is essential for two specific reasons; first, to permit and protect the functioning of the competitive system as we know it in this country, and, secondly, to make possible a standard of living for the American workers which will meet the requirements of decent citizenship.
>
> "Discussing the first problem of the competitive system, and the need for permitting that system to function efficiently, it appears that behind this legislation is the single maxim; namely, that the welfare and profits of no private business shall interfere with the welfare of the nation as a whole. Minimum wages, maximum hours are expressions

of this maxim. They aim at eliminating from our economic order those who would seek economic success at the expense of the health and a decent living of other human beings.

"If our existing industrial system is to flourish, the unfair competition of the past with its sweatshops and underpaid labor must be eradicated. For it must be substituted a competitive system which gives to every business enterprise an equal opportunity in the struggle for existence. And it is only this kind of a competitive system which has any claim to existence." (Hearings, Part 2, p. 309.)

Mr. Lubin gave this answer to the question as to unemployment:

"Frankly, I would say that the number of workers directly affected by the minimum wage provision would not be in excess of 2,000,000. On the other hand, in regard to the hours, there it will depend entirely upon the regulations of the Board. If they permit overtime, and the pay of time and a half, as the bill provides, there is no way of telling what the employer will do. Is he going to take on new people, or let his present people work overtime at time and a half? * * * (ibid., p. 338.)

"If you take the various industries and look at the number of hours that they are working, you will find that the industries that are employing the most people are working in excess of 40 now, and are for the most part paying overtime rates. That would be true of steel, automobiles, and agricultural implements. Under this law they still would be permitted to work in excess of the minimum." (ibid., p. 343.)

Only once in the course of the Hearings was attention directed toward the problem of salary arrangements. Such instance occurred in the testimony of Jay C. Hormel. Such witness, who favored the Bill,

testified that his packing plant employees were paid on a salary basis guaranteed 52 weeks a year. The hours of work necessarily varied from 53 hours a week during peak times to 16 hours during slack times. To provide stability of income the employees were paid on a salary basis, the same salary each week in the year despite fluctuating hours. The average weekly pay check of plant employees was $27.78. The salaries were based on a forty hour week in that it was recognized that excess amounts were paid for the hours above forty but such excess amounts were included in the level salary without earmarking.

The question was asked whether the overtime provisions of the Bill would disrupt such salary plan, with this result:

"REPRESENTATIVE WOOD. This bill would not affect your wage structure, it would just affect your hourly structure?

"MR. HORMEL. No; I do not believe we would be particularly affected by the bill in any way, that is, as it is now drawn. However, I do think it can be so drawn as to affect us. In other words, I think it can be so drawn as to raise everybody's level.

"REPRESENTATIVE WOOD. The 40 hours a week would affect you?

"MR HORMEL. I do not understand that the bill says that. I understand the bill now provides the time such as we have. * * *

"REPRESENTATIVE CONNERY. Mr. Hormel, I just want to ask you as to whether you would be affected by this bill under the 40-hour week as to time and a half overtime, when you work over that 40 hours?

"MR. HORMEL. I understood the exceptions were

very much in the spirit of what I recommended here. The only reason why I make the recommendation for the change of that part of it is that if it were specifically stated that, attached to a dependable weekly wage, average hours, instead of weekly limits of employment, become a proper standard so long as you attach to that some method of preventing abuses, or as I guess I heard the word used here, inhumanly long hours, I believe it would not only serve to encourage the stabilizing of such plans as are now in existence but would also encourage the development of further plans for employment and wage stabilization, and certainly any operation which is conducted on a basis of retaining the employees the year round is a constructive thing socially.

"REPRESENTATIVE CONNERY. I think your statement is very constructive.

"REPRESENTATIVE RAMSPECK. Let me ask you this. I think you made a very constructive suggestion. What results have you found from this policy of continuous employment? Are your employees better satisfied? Are they more efficient?

"MR. HORMEL. Well, I am sure that both are true.

"REPRESENTATIVE RAMSPECK. I am particularly interested in that because I think the eventual solution of our labor problems is annual earnings rather than hourly rates. If this bill, as Mr. Lewis suggested that it be drafted, were applied to your business here is what would happen, would it not: You could not work longer than 40 hours, no matter what the conditions of your business were and the result would be you would have to lay off a lot of people at times and take on people at times?

"MR. HORMEL. Yes.

"REPRESENTATIVE RAMSPECK. Because there would not be any discretion in the Board to vary the wage scale, and you could no longer afford to

have this continuous pay policy under those conditions, could you?

"MR. HORMEL. I did not understand that the bill would discourage that continuous-pay policy as it is now drawn.

"REPRESENTATIVE RAMSPECK. I do not think it necessarily would." (Hearings, Part 2, pp. 374-377.)

Senate Committee Report—July 8, 1937

On July 8, 1937, the Senate Committee submitted a report as follows:

"The Committee on Education and Labor, after holding extensive joint public hearings, with the House Committee on Labor upon the original bill which was introduced in substantially identical form in both Houses, has carefully considered all the testimony presented and all proposed modifications suggested, and hereby reports favorably an amended bill in the nature of a substitute, with the recommendation that it do pass.

"On May 24, 1937, the President sent the following message to the Congress:

(Here quoting the message already mentioned above.)

"The right of individual or collective employees to bargain with their employers concerning wages and hours is recognized and encouraged by this bill. It is not intended that this law shall invade the right of employer and employee to fix their own contract of employment, wherever there can be any real, genuine bargaining between them. It is only those low-wage and long-working-hour industrial workers, who are the helpless victims of their own bargaining weakness, that this bill seeks to assist to obtain a minimum wage.

"The Committee believes that a start should be made at the present session of the Congress to protect this Nation from the evils and dangers

resulting from wages too low to buy the bare necessities of life and from long hours of work injurious to health. This law proposes to accomplish this purpose by closing the channels of interstate commerce to goods produced under conditions which do not meet the rudimentary standards of a civilized democracy.

"The Committee realizes that undesirable labor conditions of long standing shown by evidence to exist in our country cannot be blotted out over night, and that geographical and industrial diversities in a Nation as large and as heterogeneous as ours cannot be ignored. Practical statesmenship suggests the wisdom of a cautious legislative approach to the progressive realization of these social and economic objectives.

"The Committee has accordingly restricted the bill to the establishment of minimum wages not in excess of 40¢ per hour and to maximum hours not shorter than 40 hours a week and the prohibition of industrial child labor. * * *

"The bill is divided into five parts:

"Part I contains the legislative declaration of purpose, the definition of terms used in the bill, and a section establishing the Labor Standards Board.

"Section 1, the legislative declaration, recites the adverse effect upon interstate commerce of the employment of workers under substandard labor conditions in occupations in and affecting interstate commerce. It also contains a declaration that the correction of such condition affecting interstate commerce requires congressional action prohibiting the shipment in interstate commerce of goods produced under substandard conditions, and providing for the elimination of substandard labor conditions in occupations in and directly affecting interstate commerce. * * *

"Section 4 (c) authorizes the Board by order

from time to time to declare for such occupations as are brought under the Act a maximum work week (and the maximum work day therein) which shall be as nearly adequate as is economically feasible, without curtailing earning power, to maintain health, efficiency, and general-wellbeing. * * *

"Subsection (a) introduces flexibility in the regulation of hours authorizing employment for more hours per week than the applicable maximum upon condition that payment for such overtime is made at one and one-half times the regular rate." * * *

"Section 18 provides for the payment of reparation to employees who have been paid lower wages or who have been employed for longer hours than the applicable standards allow. In the case of wages this reparation amounts to the difference between the wage received and that which should have been paid. In the case of hours, additional compensation is required for the overtime (where the Act requires overtime) at the rate of one and one-half times the regular wage." (Senate Report No. 884, 75th Congress, First Session.)

Here again the emphasis is upon "those low-wage and long-working-hour industrial workers" and upon "a cautious legislative approach" and absence of intent to "invade the right of employer and employee to fix their own contract."

The Senate Committee Bill

The Bill so reported by the Senate Committee contained substantially the same declaration of legislative purpose which has already been quoted from the Original Bill. It followed the scheme of the Original Bill in creating a Labor Standards Board to administer the Act. Unlike the Original Bill, no figure for minimum wage or maximum hours was to be specified, except as

limits beyond which the Board could not go in fixing wages and hours, 40¢ per hour being the limit as to wages and 40 hours per week the limit as to hours. Within such limits the Board was authorized to fix minimum wages and maximum hours in such industries as the Board should select. The child labor provisions were somewhat changed, the industrial strife provisions were eliminated and certain tariff provisions were added. But in all respects pertinent to this case the provisions of the Senate Committee Bill were identical with those of the Original Bill. The provision for payment of time and one-half for overtime hours was identical with the provision on the same subject above quoted from the Original Bill. Also the provision for reparation at the rate of one and one-half times the *agreed* wage for the overtime hours was identical with the same provision appearing in the Original Bill. That is to say, again *agreed* wage was treated as equivalent in meaning to "regular rate" of pay.

Such equivalency of meaning is further indicated from the Senate Committee Report, above quoted, where such provisions of the Bill are analyzed. Indeed, in the Senate Committee Report, the language *agreed* wage is reproduced as "regular rate" of pay.

The Senate Committee Bill reached the floor of the Senate for debate on July 26, 1937. Except for a change in the child labor provision no important change was made on the floor of the Senate. The Bill passed the Senate on July 31, 1937.

Maloney Amendment

This amendment offered on the floor of the Senate

during consideration of the Senate Committee Bill, but voted down, is of importance because it was an effort to substitute an absolute restriction on hours for the time and one-half provision contained in the Senate Bill.

The Maloney Amendment provided that the Labor Standards Board would take a census of unemployment in this country; that, based upon such census, a maximum workweek would be established, running from 30 hours per week, if more than 8,000,000 persons were found to be unemployed, to 40 hours per week, if 2,000,000 or less persons were found to be unemployed, without provision for permission of overtime work under any circumstances. The amendment further contained a provision restricting the right of the employer "to reduce, directly or indirectly, the daily, weekly, or monthly wage rate in effect" on January 1, 1938.

Such amendment was rejected on the floor of the Senate on July 31, 1937.

It was not the desire of the Senate to impose restrictions on hours beyond the requirement of one and one-half to one ratio of pay, or to freeze wages beyond a minimum wage.

First House Committee Report—August 6, 1937

The House Committee reported on August 6, 1937. The Senate Committee Bill having already been reported to and passed by the Senate, the House Committee had taken up the Senate Bill in lieu of H. R. 7200.

The House Committee Report, after explaining the

amendments recommended by the Committee, and quoting in full the President's message of May 24, 1937, continued as follows:

> "From the message of the President, above quoted, it is plain that this administration is privileged to give relief to that large majority who constitute one-third of our population, referred to by the President as 'ill-nourished, ill-clad, and ill-housed.' The great mass of our population has little patience with that small minority which has been termed 'chiselers.' It is at this minority particularly that the bill, a modest and conservative approach to the great objectives outlined by the President in his message is aimed. * * *
>
> "America does not suffer from a scarcity of goods or a scarcity of labor, but from a scarcity of purchasing power. American agriculture can produce all the food we can buy. American industry can produce all the industrial products which our markets today are able to absorb. The American farm and the American factory can supply much more adequately and abundantly the needs of our people if our people had the wherewithal to buy what the farm and factory can produce. A full third of the American people have not the purchasing power to maintain what we should like to regard as a decent standard of American living. Too many of our workers are working excessively long hours for excessively low pay, too many men and women able and willing to work, are unable to do so, seek as they may to find a job.
>
> "A fair day's pay for a fair day's work will increase the purchasing power of American workers. It will enable them in turn to buy more products from farm and factory. It will give increased employment in industry and on the farm to those now unemployed. * * * It only attempts in a modest way to raise the wages of the most poorly paid workers and to reduce the hours of those most

overworked. The bill is intended to aid and not supplant the efforts of American workers to improve their own position by self-organization and collective bargaining. Collective bargaining efforts will be greatly strengthened by the power given to the Board to prevent competing, chiseling employers from undercutting decent, minimum, wage standards or from stretching the maximum-hour standards.

"The Board is permitted to determine minimum wages and maximum hours only in those industries where substandard labor conditions exist. The high type American businessman whose wages and hours are in line with the thought of the President on this social principle need not fear that the Government is trying to interfere with his business." (House Report No. 1452, 75th Congress, First Session, pp. 8-10.)

Then follows an analysis of the various sections of the bill in substantially the same terms employed in the Senate Committee Report, including the excerpts on such subject already quoted above from the Senate Committee Report.

Again, the same emphasis upon social and welfare considerations and a measure of new emphasis upon increasing purchasing power. Of course, unemployment relief through increasing purchasing power by virtue of the minimum wage and time and one half provisions is to be distinguished from spreading the work by the direct action method of applying the overtime provision as if it compelled a curtailment of hours of work.

The House Committee Bill

The House Committee Bill was substantially identical with the Senate Committee Bill as adopted in the

Senate on July 31, 1937, save that the provisions of the Original Bill with respect to child labor were substituted for the amendment on such subject which had been adopted on the floor of the Senate, and further provisions were added to protect collective bargaining agreements from operation of the bill.

For failure of the Rules Committee of the House to issue a rule to permit consideration of the measure, the regular session of Congress adjourned without further action on the legislation.

Special Session—November 15, 1937

A special session of Congress convened by call of the President on November 15, 1937.

On that day the President delivered a message to Congress. A section of such message devoted to labor related to wage and hour legislation as follows:

> "I believe that the country as a whole recognizes the need for immediate congressional action if we are to maintain wage income and the purchasing power of the nation against recessive factors in the general industrial situation. The exploitation of child labor and the undercutting of wages and the stretching of the hours of the poorly-paid workers in periods of business recession have a serious effect on buying power. In the interest of the national economy such adjustments as must be made should not be made at the expense of those least able to bear them. * * *
>
> "Although there are geographic and industrial diversities which practical statesmanship cannot well ignore, it is high time that we have legislation relating to goods moving in or competing with interstate commerce which will accomplish two immediate purposes.
>
> "First. Banish child labor and protect workers

unable to protect themselves from excessively low wages and excessively long hours.

"Second. End the unsound practice of some communities—by no means confined to any one section of the country—which seek new industries by offering as the principal attraction labor more plentiful and much cheaper than may be found in competing communities." (Congressional Record, vol. 82, p. 6.)

It will be observed that emphasis is still upon the social considerations. Unemployment is not mentioned at all, except as relief of unemployment might be a consequence of increasing purchasing power by increasing wages among the lower paid groups. There is still no hint of a shift of emphasis from the social and welfare objectives to direct-action-spread-the-work objectives, such as were rejected when voting down the Maloney amendment at the regular session.

On December 15, 1937, enough signatures having been obtained to discharge the Rules Committee, the bill, as reported by the House Committee, was presented to the House as a committee of the whole.

At once Mrs. Norton, who had succeeded Mr. Connery as Chairman of the House Committee on Labor, offered a substitute bill, known as the Norton Amendment. The substitute bill was identical with the House Committee Bill except in lieu of a Labor Standards Board the bill created a wage and hour division in the Department of Labor, under the direction of an Administrator, and provided for appointment of industry committees, composed of employers and employees in each industry, the Administrator and the industry

committees to perform all the functions of the Labor Standard Board in fixing minimum wages and maximum hours, subject to the same limitations contained in the prior drafts of the legislation. The substitute bill contained the same familiar language found in the prior drafts, to wit:

> "Unless an applicable order of the Administrator under this Act shall otherwise provide, the maintenance among employees of an oppressive work week shall not be deemed to constitute a substandard labor condition if the employees so employed receive additional compensation for such overtime employment at the rate of one and one-half times the regular hourly wage rate at which such employees are employed." (House Journal, 1937, p. 62.)

and the same familiar reparation provision, to wit:

> "If any employee is employed for more hours per week or per day than the maximum workweek or work day required to be maintained by any provision of this act or of a labor-standard order, he shall be entitled to receive as reparation from his employer additional compensation for the time that he was employed in excess of such maximum workweek or workday at the rate of one and one-half times the *agreed* wage at which he was employed, or the minimum wage, if any, for such time established by this act or by an applicable labor-standard order, whichever is higher, less the amount actually paid to him for such time by the employer." (ibid., p. 64.)

On the same day a still additional substitute bill was offered by Congressman Griswold.

The Griswold amendment eliminated all differentials and all necessity for administrative action and imposed a single hard and fast standard as follows:

"It shall be unlawful to employ any person in any employment affecting interstate or foreign commerce at a wage less than 40 cents an hour, or at work in excess of 8 hours per day or more than 40 hours in any 1 week, or to employ any person under conditions of oppressive child labor as hereinafter defined: Provided, That in case of emergency the provisions of this act shall not apply during the period of such emergency: Provided further, That such employer affected file with the State labor commissioner or other proper State official designated by law a sworn statement as to the necessity for such action; Provided further, That such employer shall pay to his workers during such emergency wages of not less than time and one-half for work in excess of 8 hours per day or 40 hours in any 1 week." Congressional Record, vol. 82, p. 1591.)

The Griswold amendment was rejected on December 15, 1937, and again opposition was registered to unrestricted spread-the-work legislation.

The Norton amendment was recommitted to the Committee on Labor on December 17, 1937, and the Special Session ended without further action on the legislation.

Third Session—January 3, 1938

With the opening of the Third Session of the Seventy-Fifth Congress on January 3, 1938, a third message was received from the President in which wage and hour legislation was a subject. The important portions of such message follow:

"To raise the purchasing power of the farmer is, however, not enough. It will not stay raised if we do not also raise the purchasing power of that third of the nation which receives its income from industrial employment. Millions of industrial

workers receive payment so low that they have little buying power. Aside from the undoubted fact that they thereby suffer great human hardship, they are unable to buy adequate food and shelter, to maintain health or to buy their share of manufactured goods. * * *

"In both cases it is worth our while to wonder whether some of these opponents are not at heart opposed to any program for raising the wages of the underpaid or reducing the hours of the overworked. * * *

"We are seeking, of course, only legislation to end starvation wages and intolerable hours; more desirable wages are and should continue to be the product of collective bargaining. * * *

"Wage and hour legislation, therefore, is a problem which is definitely before this Congress for action. * * *

"Again I revert to the increase of national purchasing power as an underlying necessity of the day. If you increase that purchasing power for the farmers and for the industrial workers—especially for those in both groups who have least of it today—you will increase the purchasing power of the final third of our population—those who transport the products of farm and factory and those of the professions who serve all groups." (Congressional Record, vol. 83, pp. 8-9.)

Again, as in both previous messages, there is no hint of a share the work idea. Again, the emphasis is upon social and welfare considerations and increasing total purchasing power by maintaining and increasing wages of the underpaid.

Second Report of House Committee

The House Committee on Labor, to whom the bill had been recommitted at the end of the special session,

made its second report on April 21, 1938. The committee reported out an entirely new bill, to be known as "Fair Labor Standards Act of 1938."

The new bill did away entirely with the Labor Board and the Wage and Hour Division and all other administrative agencies, except that the Secretary of Labor was charged with the duty of determining what industries so directly affected interstate commerce as to be subject to the provisions of the bill.

The legislative declaration of purpose remained substantially unchanged, as follows:

> "The employment of workers under substandard labor conditions in occupations in commerce, in the production of goods for commerce, or otherwise affecting commerce, (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate among the workers of the several states conditions detrimental to the physical and economic health, efficiency, and well-being of such workers; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.
>
> "The correction of such conditions affecting commerce requires that the Congress exercise its legislative power to regulate commerce among the several states by prohibiting the shipment in commerce of goods produced under substandard labor conditions and providing for the elimination of substandard labor conditions in occupations in and affecting commerce."

The minimum wage provision was as follows:

"Every employer engaged in commerce in any industry affecting commerce shall during the first three hundred and sixty-five days from the effective date of the original order issued under section 6 with respect to such industry, pay each employee employed by him a wage at a rate not less than 25 cents per hour, and during each succeeding three-hundred-and-sixty-five-day period pay each employee employed by him at a wage not less than the rate applicable under this section during the immediately preceding period increased by 5 cents per hour; except that no provision of this Act shall require any such employer to pay a wage at a rate in excess of 40 cents per hour." (House Report No. 2182, 75th Congress, Third Session, pp. 1-2.)

The provision as to maximum hours was as follows:

"No employer engaged in commerce in any industry affecting commerce shall employ any of his employees for a workday longer than eight hours, or shall during the first three hundred and sixty-five days from the effective date of the original order issued under Section 6 with respect to such industry, employ any of his employees for a workweek longer than forty-four hours or during any successive three-hundred-and-sixty-five-day period employ any of his employees for a workweek longer than that applicable under this section during the immediately preceding period reduced by two hours; except that no provision of this Act shall require the maintenance by any such employer of a workweek shorter than forty hours. No employee shall be deemed to be employed in violation of this section if he receives additional compensation for his overtime employment at the rate of one and one-half times the regular hourly rate at which he is employed, or times the rate applicable under and pursuant to this Act, whichever is higher." (ibid., pp. 2-3.)

The Committee report recommending the adoption

of such bill may be summarized by excerpts from such report as follows:

> "In May of 1937 the President sent to Congress a message urging the passage of legislation to raise the wages and shorten the working hours of the underprivileged of our country. Less than a week ago he reiterated the hope that Congress would enact such legislation.
>
> "The need for its enactment during the present session of Congress is urgent. In the last few months there has occurred an alarmingly sharp decline in business activity. With this decline have come the inevitable wage cuts which the great mass of American businessmen so deplore but are powerless to prevent. These businessmen know that wage cutting sets in motion a vicious spiral of deflation which, if allowed to gather sufficient strength, may threaten the foundations of government itself.
>
> "The Federal Government cannot and should not attempt to regulate the wages of all wage earners throughout the United States. But the Federal Government cannot by its inaction permit the channels of commerce to be used to set this spiral of deflation in motion. It cannot and should not permit our great interstate industries to become engulfed. It cannot in silence see the channels of commerce used to spread suffering and destitution.
>
> "During the last few years unprecedented demands have been made upon the Federal Government and upon state and local governments for relief and work relief. Unless the wages paid by private employers are sufficient to maintain the bare cost of living, such demands will necessarily continue. The payment of oppressive wages is not only detrimental to interstate commerce and to the health and well-being of employees of employers engaged in interstate commerce, but also casts

a direct burden for the support of such employees upon Government." (ibid. pp. 5-6.)

Here again not a word is found that would warrant petitioner's extreme position.

Representative Ramspeck submitted a minority report based upon the failure of the bill to provide procedure for recognizing differentials between industries and territorial regions.

On May 24, 1938, Representative Ramspeck introduced as an amendment to the House Committee bill a substitute bill of substantially the same provisions as the bill originally adopted by the Senate and recommended by the first report of the House Committee.

Such substitute bill was rejected on May 24, 1938, and the bill last reported by the House Committee was passed on that day, without substantial amendment.

Conference Committee Report and Act as Finally Adopted

Now it was necessary that the two bills go to a conference committee to reconcile the differences between the House bill and the bill which had passed the Senate nearly a year before.

The Senate bill provided for the creation of a Board with wide administrative authority. Such bill itself expressed no minimum standards except that the Board was not permitted to go above 40¢ an hour or below 40 hours a week in fixing standards. Differentials were to be recognized among industries and territorial regions. Overtime was to be permitted upon payment of time and one-half. The House Bill provided for a bare minimum of administrative action. All applicable minimums were fixed in the bill itself. No administra-

tive action was contemplated except that the Secretary of Labor would determine what industries so affected commerce so as to become the subject of the bill. Overtime was permitted upon payment of time and one-half.

The Conference Committee harmonized the differences between the two bills by writing still a new substitute bill, known as "Fair Labor Standards Act of 1938," which was reported out on June 11, 1938, was adopted by the House on June 13th and by the Senate on June 14th and was approved by the President on June 25, 1938.

The Conference bill was modeled after the House bill. It contemplated a minimum of administrative action. The minimum standards were stated in the bill itself and were not left to administrative determination. Such minimums were the same as had been specified in the House bill and the final minimums were to be reached by yearly stages, as in the House bill. The bill created a wage and hour division in the Department of Labor under the direction of an Administrator. During the first seven years after the enactment of the bill, when the minimum wage was gradually to be stepped up from 25¢ an hour to 40¢ an hour, the Administrator was authorized to increase the minimum wage up to 40¢ an hour as to particular industries by order entered after hearing and approval by industry committees appointed by the Administrator from members of the industry. Such administrative authorization was limited to minimum wages. No power was granted to the Administrator with respect

to maximum hours. Pay for overtime hours was required at a rate not less than one and one-half times the regular rate.

The pertinent provisions of the Conference bill are contained in Part I of this Appendix.

Since the Conference report itself was limited to a mere restatement of the provisions of the substitute bill and of the Senate and House bills for which the new bill was a substitute no excerpts from such report are included here.

Debates in Congress and Speeches Outside of Congress

So great is the volume of the debates and speeches that it would be impossible to abstract them within reasonable limits of space. Such was the contrariety of opinion expressed by the proponents of the legislation in its various stages of development that no unanimity of intent is discernible.

A great number, perhaps a majority of all who spoke, saw in the bill only the social and welfare considerations involved in eliminating sweatshops, starvation wages, and child labor.

Others, smaller in number, thought that the legislation would tend to reduce unemployment. A complete list of those who so expressed themselves is contained in Note 36 at page 29 of petitioner's brief. Some few of those there listed thought that such would be a direct result of the maximum hours provision. Others thought that such consequence would come about only by virtue of increasing purchasing power through the wage increase effect of the minimum wage and the

maximum hour provisions. Some spoke of spreading the work during the early stages of the bill (when the Labor Standards Board could have imposed inflexible limits on hours) but forsook such argument when the bill took its later form.

Others took the position from the first that the legislation would have no effect at all, or only a negligible effect, on unemployment. Some opposed the legislation because it did not strike at the problem of unemployment, favoring legislation of the type of the Maloney or Griswold amendments instead. Others favored the legislation for exactly the same reason.

Some pointed out that the bill would be unconstitutional if it regulated wages or hours beyond the necessities of elimination of child labor, sweatshops and starvation wages. Many thought that constitutional objections were satisfied because the bill would not apply except to the lowest paid unskilled worker constituting the submerged one-third whose pay was indecently low and whose hours were stretched beyond the point requisite for health.

Taking it all in all, one is impressed with the accuracy of the conclusions of the Circuit Court of Appeals (R. 491):

> "The legislative history of the act, while showing as the legislative history of all new and controversial acts does some individual differences of opinion, adds up to showing, as to the overtime provisions, only what the act shows, that in broad outline the Congress intended that for overtime work, time and one-half the regular rate of pay at which each was employed, should be paid each employee. How that regular rate should be arrived

at, when it was fixed above the minimum, was not * * * dealt with * * except to say that wages above the minimum must be left to bargaining between employee and employer." * * *

"For, there is no reference in the whole legislative history to prohibiting agreements between employer and employee, as here, for all inclusive and regular weekly salaries, none whatever to the effect that it was intended that persons already paying more than the minimum wage the act provided should be compelled to pay still more."

Excerpts from some of the most pertinent speech material, arranged chronologically, are included as follows: (Emphasis ours throughout)

Congressional Record, volume 81, *page* 7650:

"MR. BLACK. The board would have jurisdiction to do it, but under the provisions of the law it would be my judgment that the board would be very **reluctant**, indeed, to attempt **to interfere with a bona fide agreement** made between employer and employee."

Congressional Record, volume 81, *page* 7651:

"MR. WALSH. One of the objectives of the bill is to give a degree of protection, a degree of security against ruthless competition to the employer, no matter where he is located, who is paying high wages and requiring his employees to work fewer hours than is the case with his competitors.

"MR. BLACK. The bill is intended to prevent, so far as wages are concerned, the payment of wages which are below a necessary subsistence level. The bill is written upon the principle that the Congress should not attempt to make itself a wage-fixing body. We believe that **wages should be fixed by agreement between employer and employee**, except that the bill has as its objective withdrawing from competitive conditions the wage level necessary for a person to live on, wherever he may be."

Congressional Record, volume 81, *page* 7746:

SEN. BLACK: "How many workers are affected? Evidence given at the hearings on the bill indicated that something over 3,000,000 people are getting less than 40 cents an hour, and these 3,000,000 would be directly affected by the bill. The evidence also indicated that at least 6,000,000 people are now working more than 40 hours a week in industries affected by the bill, and these 6,000,000 would stand to benefit directly from its provisions.

"The net effect of this bill for labor as a whole will be incalculable. By shortening hours it will create new jobs in the **unskilled** categories for millions of our **unskilled** unemployed. By setting up better standards of wages in the interstate industries directly affected, it will indirectly create competition for labor which should affect wages in all industries where the labor is interchangeable between interstate and local industries. The Federal standards will also stimulate State legislation for local industry, and bring about better labor standards for all workers. And finally the bill will underpin the whole wage structure, by law, at a point from which collective bargaining can build more surely and which will be a bulwark against the collapse of higher wages in the event of a business recession."

Congressional Record, volume 81, *page* 7747:

SEN. BLACK: "That common sense also tells us that in addition to improving the health and happiness of the worker, it will help create those jobs and supply necessary purchasing power, if we shorten unreasonably long hours and if we raise the income of the whole lower-income third of our industrial and farm population to an American standard of living."

Congressional Record, volume 81, *page* 7800:

"MR. BLACK. * * * The purpose and intent of